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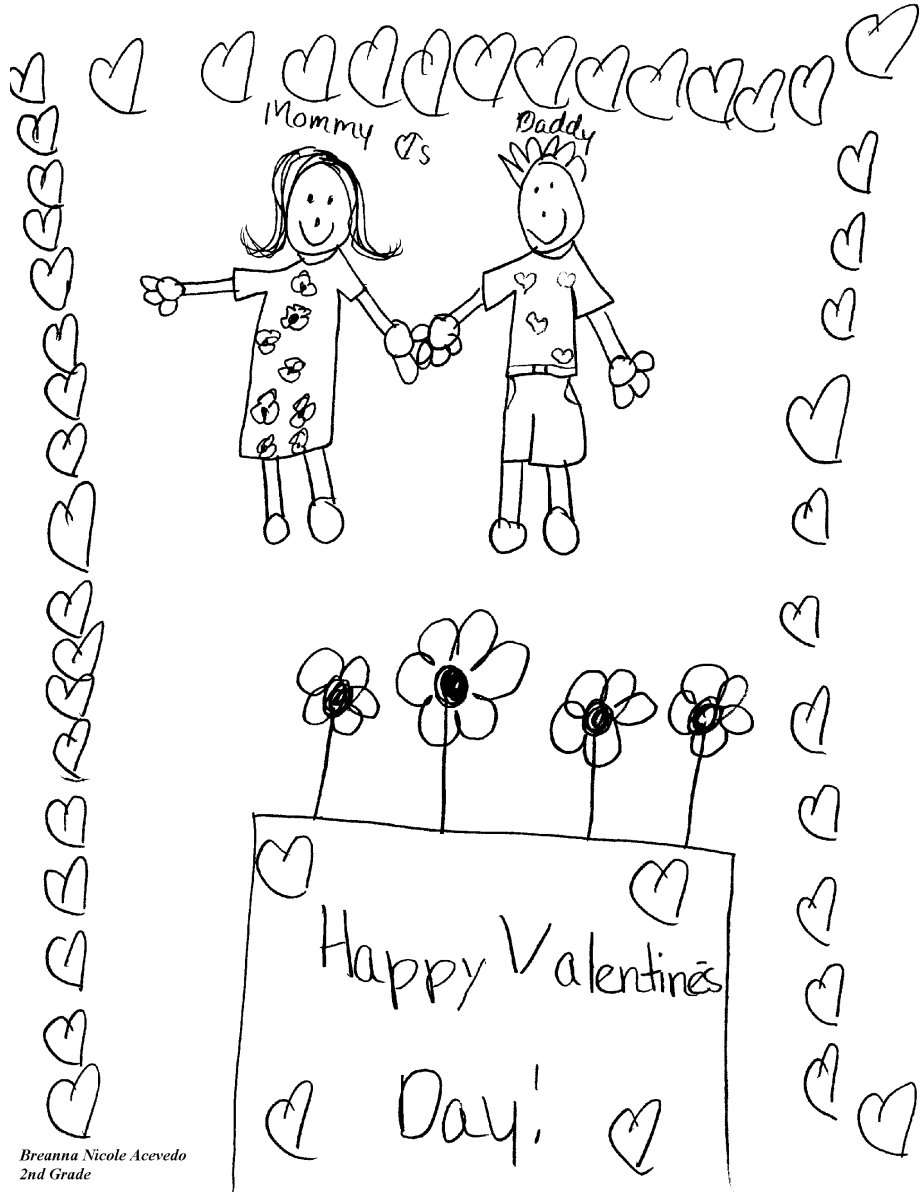

Breanna Nicole Acevedo
2nd Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

ADOPTED RULES

RULE REVIEW

IN ADDITION

Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
http://www.sos.state.tx.us/texreg

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Open Records Question

Parties interested in submitting a brief to the Attorney General concerning this ORQ are asked to please submit the brief no later than February 25, 2005.

ORQ-66

Requestor: Reagan E. Greer, Executive Director, Texas Lottery Commission, P.O. Box 16630, Austin Texas 78761.

RE: When requested public information is available on a governmental body's website, does a governmental body comply with the Public Information Act (the "PIA") by simply referring the requestor to the governmental body's website or does the PIA require the governmental body to make the requested information available in other ways?

For further information, please contact Kay Hastings at (512) 463-9919.

TRD-200500365
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: January 26, 2005

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Opinions

Opinion No. GA-0294

The Honorable G. E. "Buddy" West

Chair, Committee on Energy Resources

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of the Railroad Commission to use monies from the Oil Field Cleanup Fund to plug oil and gas wells and perform other activities (RQ-0253-GA)

S U M M A R Y

The Texas Railroad Commission is authorized to use the Oil Field Cleanup Fund to plug abandoned oil and gas wells and to remediate oil and gas well sites, provided the activities are conducted in compliance with other provisions of the Natural Resources Code.

The Texas Railroad Commission is also authorized to expend funds from the Oil Field Cleanup Fund to remediate commercial disposal sites to the extent a site is contaminated with oil and gas wastes or other substances or materials produced from oil and gas production, the drilling of exploratory wells, and the operation, abandonment and plugging of wells.

Opinion No. GA-0295

The Honorable Bruce Isaacks

Denton County Criminal District Attorney

1450 East McKinney, Suite 3100

Post Office Box 2850

Denton, Texas 76202

Re: Operation of the ex officio road commissioner system and allocation of road and bridge funds in Denton County (RQ-0254-GA)

S U M M A R Y

In a county operating under the ex officio road commissioner system authorized by Transportation Code chapter 252, subchapter A, the ex officio road commissioners of two precincts may not jointly hire a road and bridge crew to work in both precincts. Nor may an ex officio road commissioner contract with a public or private entity to perform road work in his precinct, although the commissioners court may enter into such contracts. Denton County, in attempting to implement the ex officio road commissioner system in these ways, does not comply with chapter 252, subchapter A.

The commissioners court of a county has broad discretion, subject to judicial review and abrogation for abuse of discretion, to allocate the road and bridge fund among the county's precincts, keeping in mind its duty to represent the county as a whole. The Denton County Commissioners Court may amend its budget to authorize an emergency expenditure under the circumstances stated in Local Government Code section 111.070 and may transfer funds originally budgeted for one precinct to another precinct without authorizing an emergency expenditure.

A county may continue to administer its roads under the ex officio road commissioner system even if there are no longer any county roads in the unincorporated area of one precinct.

Opinion No. GA-0296

Mr. Gary L. Warren Sr.

Executive Director

Texas Commission on Fire Protection

Post Office Box 2286

Austin, Texas 78768-2286

Re: Whether the Texas Commission on Fire Protection may provide reimbursement for room and board as part of a Fire Department Emergency Program tuition scholarship for students who attend a training school (RQ-0255-GA)

S U M M A R Y

The Texas Commission on Fire Protection is authorized to provide reimbursement for room and board as part of a Fire Department Emergency Program tuition scholarship for students who attend a training school. The Commission may, in addition, fund room and board for fire fighters who attend the school under a Texas Forest Service tuition-only scholarship.

Opinion No. GA-0297

The Honorable Frank J. Corte Jr.

Chair, Committee on Defense Affairs and State-Federal Relations

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether Local Government Code section 214.212(c)(1), which permits a municipality to adopt local amendments to the International Residential Code, limits the municipality to adopting only amendments that are equivalent to or more stringent than the standards of the International Residential Code (RQ-0256-GA)

S U M M A R Y

Local Government Code section 214.212(c)(1), which permits a municipality to adopt local amendments to the International Residential Code, does not limit the municipality to adopting only local amendments that are equivalent to or more stringent than the standards of the International Residential Code.

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at (512) 463-2110.

TRD-200500370
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: January 26, 2005

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER J. REPORTS BY A CANDIDATE FOR STATE OR COUNTY PARTY CHAIR

1 TAC §20.579

The Texas Ethics Commission proposes an amendment to §20.579, relating to filings by candidates for county chair in certain counties. Section 20.579 currently provides that in counties with a population of 350,000 or more, candidates for county chair of a political party with a nominee on the ballot in the most recent gubernatorial general election, must file pre-election campaign finance reports.

The amendment to §20.579 requires candidates for county chair to file pre-election reports only if they are opposed. The amendment also allows a candidate for county chair to select the modified reporting option that is available to other candidates. The modified reporting option allows a candidate to avoid the requirement to file pre-election reports if the candidate does not accept contributions or make political expenditures (other than expenditures for a filing fee) of more than $500 in the election.

David A. Reisman, Executive Director, has determined that for each year of the first five years the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Reisman has also determined that this rule will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarification of the reporting requirements for certain candidates for county chair.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because this rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to David A. Reisman, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The amended section is proposed under Government Code, Chapter 571, Section 571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §20.579 affects Election Code, Section 257.005.

§20.579. Candidates for County Chair in Certain Counties.

(a) - (b) (No change.)

(c) In addition to the semiannual reports due to be filed with the commission by January 15 and July 15 under section 20.577(b) of this title, a candidate for county chair covered by this section who has an opponent on the ballot in an election shall file the following two reports with the commission for each primary election except as provided by subsection (d).

(1) - (2) (No change.)

(d) A candidate who has declared the intention to file reports in accordance with section 20.217 of this title (relating to Modified Reporting) and who remains eligible to file under the modified schedule is not required to file pre-election reports.

(e) In addition to other required reports, a candidate for county chair covered by this section who is in a runoff election shall file one report with the commission for the runoff election. The runoff election report shall be filed not later than the eighth day before runoff election day. The report covers the period beginning the ninth day before the primary election day and continuing through the tenth day before runoff election day.

(f) [~~(e)~~] Except as provided by Section 254.036(c), Election Code, each report filed with the commission under this section must be filed by computer diskette, modem, or other means of electronic transfer, using computer software provided by the commission or computer software that meets commission specifications for a standard file format.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2005.

TRD-200500266

David A Reisman
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 463-5800

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CHAPTER 40. FINANCIAL DISCLOSURE FOR PUBLIC OFFICERS

1 TAC §40.5

The Texas Ethics Commission proposes new §40.5, relating to information about referrals required to be reported on the personal financial statement filed with the Texas Ethics Commission.

The proposed new §40.5 clarifies Government Code, Section 572.0252, the law requiring information about referrals to be reported by state officers who are attorneys.

David A. Reisman, Executive Director, has determined that for each year of the first five years the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Reisman has also determined that this rule will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarification of the reporting requirements for state officers who are subject to the Government Code, Section 572.0252, reporting requirements.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because this rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to David A. Reisman, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The new section is proposed under Government Code, Chapter 571, Section 571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new §40.5 affects Government Code, Section 572.0252.

§40.5. Referrals.

For purposes of section 572.0252 of the Government Code, a state officer who is an attorney shall report on the financial statement the following:

(1) making a referral for legal services if the state officer was compensated for making the referral. The financial statement shall include the full name of the person to whom the referral was made and the monetary category for the amount received for making the referral; and

(2) receiving a referral for compensation for legal services. The financial statement shall include the full name of the person from whom the referral was received.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2005.

TRD-200500267
David A. Reisman
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 463-5800

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PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 255. FINANCE

1 TAC §255.1

The Commission on State Emergency Communications (CSEC) proposes an amendment to §255.1, concerning the statewide equalization surcharge.

This action is proposed as part of Rule Review of Chapter 255, which is being published elsewhere in this issue of *Texas Register*, pursuant to Government Code, §2001.039.

The rule continues to be essential to the CSEC's operations and per statutory authority.

CSEC proposes to re-adopt the rule with amendments that change the way surcharge amounts are rounded to the next whole cent; and to clarify how the surcharge should be calculated if the provider does not separately bill its customers for intrastate long distance service. The purpose of the rounding amendment is to mirror the approach required by the Texas Tax Code with respect to sales tax. The clarification is necessary to address the situation where a provider does not separately identify on a customer's invoice those charges that are subject to the equalization surcharge.

Paul Mallett, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Mallett also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of the amendment will be greater consistency with the Tax Code provisions on rounding and when intrastate long-distance service is not separately billed. While no historical data is available, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the amendment must be submitted in writing within 30 days after publication of the proposal in the *Texas*

Register to: Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendment is proposed pursuant to the Health and Safety Code, Chapter 771, §§771.001(4), 771.051, and 771.072.

No other statutes, articles or codes are affected by the proposed amendment.

§255.1. Statewide Equalization Surcharge.

An equalization surcharge is established in the amount of 6/10 of 1% (0.60%). Rounding of the surcharge amount shall be in compliance with Texas Tax Code Section 151.053. [~~, the amount to be rounded up to the next whole one cent ($0.01) in the case of fractions.~~] This surcharge will be assessed to each customer receiving intrastate long-distance service, except those exempted by the Texas Health and Safety Code Section [~~§~~] 771.074. The surcharge shall be applied to the total amount for intrastate long-distance service charged by the customer's [~~long-distance~~] service provider, but such amount shall not include taxes charged by local, state, and federal authorities, nor shall local, state, or federal taxes be applied to this surcharge unless otherwise required by law. Texas Tax Code Section 151.025 shall apply when intrastate long distance services are not billed separately on a customer's invoice.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

TRD-200500285
Paul Mallett
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 305-6933

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1 TAC §255.2

The Commission on State Emergency Communications (CSEC) proposes an amendment to §255.2, concerning the definition of intrastate long distance service.

This action is proposed as part of Rule Review of Chapter 255, which is being published elsewhere in this issue of *Texas Register*, pursuant to Government Code, §2001.039.

The rule continues to be essential to the CSEC's operations and per statutory authority.

CSEC proposes to re-adopt the rule with two minor clerical corrections: the deletion and the addition of a word. It is noted that staff continues to monitor federal and industry activity that may necessitate further revision of this rule in order to address Internet Protocol services such as Voice over Internet Protocol.

Paul Mallett, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Mallett also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of the amendment will be more specificity and clarification on the definition and its application. While no historical data is available, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the amendment must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to: Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendment is proposed pursuant to the Health and Safety Code, Chapter 771, §§771.001(4), 771.051, and 771.072.

No other statutes, articles or codes are affected by the proposed amendment.

§255.2. Definition of Intrastate Long-Distance Service.

Intrastate long-distance service means intrastate interexchange electronic or electrical transmission, conveyance, routing, or reception of sounds, signals, data or information utilizing wires, cable, radio waves, microwaves, satellites, fiber optics, or any other methods now in existence or that may be devised. The storage of data or information for subsequent retrieval, or the processing or reception and processing of data or [~~the~~] information intended to change its form or content are not included in intrastate long-distance service.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

TRD-200500286
Paul Mallett
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 305-6933

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (ICF/MR)

1 TAC §355.457

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.457, concerning the reimbursement methodology for Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR), in its Reimbursement Rates chapter.

Background and Justification

The purpose of the amendment is to reinstate language, proposed here as §355.457(c)(2) - (3), that was inadvertently deleted from the amended version of the adopted text published in the August 20, 2004, issue of the *Texas Register* (29 TexReg 8116). The amendment also makes corrections that implement

the intent of a previous action. In addition, references to the former Texas Department of Mental Health and Mental Retardation (TDMHMR) were changed to reference the new Texas Department of Aging and Disability Services (DADS) to reflect the restructuring of the Health and Human Services Agencies.

Section-by-Section Summary

HHSC proposes to amend §355.457(c)(2)(B), Fiscal Accountability. The proposal changes reference from TDMHMR to DADS. The proposal also reinstates language inadvertently deleted that relates to the fiscal accountability requirements for providers and the requirements for repayment of funds to DADS when the fiscal accountability requirements are not met.

HHSC proposes to amend §355.457(c)(2)(B) and (C). The proposal changes references from TDMHMR to DADS.

HHSC proposes to amend §355.457(c)(2)(D). The proposal sets forth the repayment requirements for providers whose spending is between 85% and 90% of direct service revenues.

HHSC proposes to amend §355.457(c)(3). The proposal sets forth that the total direct service revenue of the modeled rates is the direct service portion of the rate multiplied by the number of allowable units paid for services provided during the reporting period.

HHSC proposes to amend §355.457(c)(3)(A). The proposal sets forth that providers whose direct service costs are 90% or more of the direct service revenues will not be subject to repayment under this section.

HHSC proposes to amend §355.457(c)(3)(B). The proposal sets forth the repayment requirements for providers whose direct service costs are less than 85% of the direct service revenues.

HHSC proposes to amend §355.457(c)(3)(C). The proposal sets forth the repayment requirements for providers whose direct service costs are between 85% and 90% of the direct service revenues.

Fiscal Note

Tom Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the amendment as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Ed White, Director for Rate Setting and Forecasting, has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section is that the rule language that has been in effect since April 1998 and was inadvertently deleted from the adopted version will be restored. This restoration is necessary to correct this error and to restore the continuity of the accountability aspect of the reimbursement methodology. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by the section.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Under §2007.003(b) of the Government Code, HHSC has determined that Chapter 2007 of the Government Code does not apply to this rule. The changes this rule makes do not implicate a recognized interest in private real property. Accordingly, HHSC is not required to complete a takings impact assessment regarding this rule.

Public Comment

Written comments on the proposed amendments may be submitted to Gilbert Estrada, Policy Analyst, at the Texas Health and Human Services Commission, Medicaid/CHIP Division, Policy Development Support, P.O. Box 85200-5200, MC - H600, Austin, Texas 78708-5200, by fax to (512) 491-1953, or by e-mail to gilbert.estrada@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for February 22, 2005, from 1:00 pm to 2:00 pm (central time) at the Health and Human Services Commission, 11209 Metric Blvd., Building H, Austin, Texas 78758. Persons requiring further information, special assistance, or accommodations should contact Gilbert Estrada at (512) 491-1331.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.457. Fiscal Accountability.

(a) General principles. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to introduction). Fiscal accountability is a process used to gauge the ongoing financial performance under the non-state operated facility reimbursement rates.

(b) Annual reporting. Fiscal accountability will consist of the annual reporting of direct service costs from all non-state operated providers. The data will be collected on a cost report designed by HHSC in accordance with §355.105(b) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(1) Direct service costs include costs associated with personnel who provide direct hands-on support for consumers and include personnel such as direct care workers, first-level supervisors of direct care staff, QMRPs, registered nurses, and licensed vocational nurses. Direct service costs include: costs related to wage rates, benefits, payroll taxes, contracts for direct services, and direct service supervision information. Accrued leave (sick or annual) can only be considered a direct service cost if the employee has a right to the cash value of that leave upon termination.

(2) The provider is responsible for submission of the fiscal accountability cost report to HHSC, and payment of amounts owed in accordance with subsection (c)[~~(3)~~] of this section, regardless of whether the provider contracts with another entity for the management or operation of the ICF/MR.

(A) If the provider contracts with another entity for the management or operation of the ICF/MR, the provider must report the specific direct services costs of that entity as required in the cost report instructions and not the amount for which the provider is contracting for the entity's services.

(B) For staff whose duties include work other than the provision of direct services, the proportion of work that is spent on direct services may be included in the direct service costs. The proportion of their salary and benefits that is compensation for direct services work can be included in the direct service cost report. The facility must have a procedure that specifies how direct service work time is allocated.

(C) If the staff providing direct services is an owner, operator, or a related party as defined in §§355.102(i) - 355.103(b)(2) of this title (relating to General Principles of Allowable and Unallowable Costs and Specifications for Allowable and Unallowable Costs), the salary and benefits must be the lesser of the actual wages and benefits paid or the wages and benefits for a comparable staff person assumed in the model. Owner and related party employees who provide both direct care and indirect services must maintain daily time sheets that record the time spent on activities in each area. The provider must maintain documentation relating to compensation, bonuses, and benefits of each owner or related party in accordance with §355.105(b)(2)(B)(xi) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). The maximum hours per fiscal year that an owner and related party employee may report on the cost report is 2080 hours per fiscal year.

(3) The direct service portions of the current rate model are inflated on an annual basis as specified in §355.456(d)(2) of this title (relating to Rate Setting Methodology).

(4) The Department of Aging and Disability Services (DADS) [~~TDMHMR~~] will place a vendor hold on a prior owner at a change of ownership which results in the execution of a new provider agreement. The prior owner must submit a fiscal accountability report to HHSC for the current reporting period. Upon receipt of an acceptable fiscal accountability report and resolution of any outstanding balances, the vendor hold will be released.

(5) For cost reports pertaining to providers' fiscal years ending in calendar year 2004 and subsequent years the following applies:

(A) Providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(B) Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs).

(C) Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(6) Field Audit and Desk Review. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments).

(c) HHSC will require providers to report all direct costs incurred in their annual fiscal year. HHSC will compare the reported direct service costs to the direct service cost component of the modeled rates.

(1) Paragraph (2) of this subsection, concerning the fiscal accountability repayment, applies to that portion of the provider's fiscal year that occurs after April 5, 1998. Paragraph (3) of this subsection, concerning the fiscal accountability repayment, applies to that portion of the provider's fiscal year that begins on or after January 1, 1999.

(2) The total direct service revenue of the modeled rates is the direct service portion of the rate multiplied by the number of allowable units paid for services provided during the reporting period.

(A) Providers whose direct service costs are 90% or more of the direct service revenues will not be subject to repayment under this section.

(B) Providers whose direct service costs are less than 80% of the direct service revenues will be required to pay to DADS [~~TDMHMR~~] the difference between the direct service costs and 95% of the direct service revenues.

(C) Providers whose direct service costs are between 80% and 85% of the direct service revenues will be required to pay to DADS [~~TDMHMR~~] 100% of the difference between the direct service costs and 85% of the direct service revenues plus 50% of the difference between 85% and 90% of the direct service revenues.

(D) Providers whose direct service costs are between 85% and 90% of the direct service revenues will be required to pay to DADS 50% of the difference between the direct service costs and 90% of the direct service revenues.

(3) The total direct service revenue of the modeled rates is the direct service portion of the rate multiplied by the number of allowable units paid for services provided during the reporting period.

(A) Providers whose direct service costs are 90% or more of the direct service revenues will not be subject to repayment under this section.

(B) Providers whose direct service costs are less than 85% of the direct service revenues will be required to pay to DADS the difference between the direct service costs and 95% of the direct service revenues.

(C) Providers whose direct service costs are between 85% and 90% of the direct service revenues will be required to pay to DADS 75% of the difference between the direct service costs and 90% of the direct service revenues.

(4) [~~(3)~~] The fiscal accountability calculation shows an estimated amount due for repayment. A provider's repayment status may change as a result of the desk review or onsite audit of the cost report or adjustments to claims paid to the provider for services provided in the cost reporting period. The provider will be notified of the results of the desk reviews or onsite audits in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). If the adjustments and or exclusions result in an amount due, or if the original estimated amount due calculation is upheld, HHSC will notify the provider of the amount due and the provider will remit the repayment amount no later than 60 calendar days after [~~of~~] the date of the notification was received by the provider.

(5) [~~(4)~~] Repayment will be collected from the following:

(A) the provider or legal entity submitting the report;

(B) any other legal entity responsible for the debts or liabilities of the submitting entity; or

(C) the legal entity on behalf of which a report is submitted.

(6) [~~(5)~~] Providers will be jointly and severally liable for any repayment due. Failure to repay the amount due by the 61st calendar day after the provider has received notification may result in a vendor hold on all of the ICF/MR payments to a provider.

(7) [~~(6)~~] Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(d) If a provider is paid a transitional add-on for a consumer in accordance with §355.456(e) of this title, the provider may exclude the amount of the transitional add-on from its fiscal accountability cost report only if the consumer resides in the small non-state operated facility for at least 12 months.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

TRD-200500304
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 424-6900

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.478

The Public Utility Commission of Texas (commission) proposes amendments to §25.478, relating to the Establishment of Satisfactory Credit for Victims of Family Violence.

The proposed amendments to §25.478(a)(3)(D), relating to the Establishment of Satisfactory Credit for Victims of Family Violence, adds local law enforcement personnel, the Office of a Texas District Attorney or County Attorney, and the Office of Attorney General as entities authorized to designate a customer as a victim of family violence in order to demonstrate satisfactory credit for electric service. Project Number 30047 has been assigned to this proceeding.

Annette Lown Mass, Staff Attorney, Legal and Enforcement Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Mass has also determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be time saved and a more efficient process for victims of family violence to receive electric service without demonstrating satisfactory credit through other means.

Furthermore, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the section. There will be no economic costs to persons who are required to comply with the proposed section.

Ms. Mass has determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and, therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days after publication.

The commission seeks comments on the proposed amendment from interested persons. Comments on the proposal (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. The deadline for submission of comments is 31 days after publication of notice. Reply comments are due 45 days after publication of notice. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should be filed in Project Number 30047.

The commission proposes this rule amendment pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated

§14.002 (Vernon 1998 & Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically pursuant to PURA §39.101, which grants the commission authority to establish various, specific protections for retail customers; PURA §39.102, which provides for retail customer choice; and PURA Chapter 17, Subchapters A, C, and D, which deal, respectively, with general provisions relating to customer protection policy, the retail customer's right to choice, and protection of the retail customer against unauthorized charges.

Cross Reference to Statutes: PURA §§14.002, 39.101, 39.102, and PURA Chapter 17, Subchapters A, C, and D.

§25.478. Credit Requirements and Deposits.

(a) Credit requirements for residential customers. A retail electric provider (REP) may require a residential customer or applicant to establish and maintain satisfactory credit as a condition of providing service pursuant to the requirements of this section.

(1) - (2) (No change.)

(3) A residential customer or applicant seeking to establish service with an affiliated REP or provider of last resort (POLR) can demonstrate satisfactory credit using one of the criteria listed in subparagraphs (A) through (E) of this paragraph. A REP other than an affiliated REP or POLR may establish other criteria by which a customer or applicant can demonstrate satisfactory credit, so long as such criteria are not discriminatory pursuant to §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

(A) - (C) (No change.)

(D) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant has been determined to be a victim of family violence as defined in the Texas Family Code §71.004, by a family violence center as defined in Texas Human Resources Code §51.002, [~~or~~] by treating medical personnel, by law enforcement personnel, by the Office of a Texas District Attorney or County Attorney, or by the Office of the Attorney General. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of a toll-free fax number to the affiliated REP or POLR.

(E) (No change.)

(4) - (5) (No change.)

(b) - (m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 14, 2005.

TRD-200500215
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 936-7223

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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS
SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §26.24

The Public Utility Commission of Texas (commission) proposes amendments to §26.24, relating to the Establishment of Satisfactory Credit for Victims of Family Violence.

The proposed amendments to §26.24(a)(1)(B)(iv), relating to the Establishment of Satisfactory Credit for Victims of Family Violence, add law enforcement personnel, the Office of a Texas District Attorney or County Attorney, or the Office of Attorney General as entities authorized to certify a person as a victim of family violence in order to demonstrate satisfactory credit for telephone service. Project Number 30046 has been assigned to this proceeding.

Annette Lown Mass, Staff Attorney, Legal and Enforcement Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Mass has also determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be time saved and a more efficient process for victims of family violence to receive telephone service without demonstrating satisfactory credit through other means.

Furthermore, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the section. There will be no additional economic costs to persons who are required to comply with the proposed section.

Ms. Mass has determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days after publication.

The commission seeks comments on the proposed amendment from interested persons. Comments on the proposal (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. The deadline for submission of comments is 31 days after publication of notice. Reply comments are due 45 days after publication of notice. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should be filed in Project Number 30046.

The commission proposes this rule amendment pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated

§14.002 (Vernon 1998 & Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically pursuant to PURA §64.004, which grants the commission authority to establish various, specific protections for buyers of telecommunications services; PURA §64.001, which establishes customer protection standards and confers on the commission authority to adopt and enforce its customer protection rules; and PURA Chapter 17, Subchapters A, C, and D, which deal, respectively, with general provisions relating to customer protection policy, the retail customer's right to choice, and protection of the retail customer against unauthorized charges.

Cross Reference to Statutes: PURA §§14.002, 64.001, 64.004, and PURA Chapter 17, Subchapters A, C, and D.

§26.24. Credit Requirements and Deposits.

(a) Dominant certificated telecommunications utility (DCTU).

(1) Credit requirements for permanent residential applicants.

(A) (No change.)

(B) A residential applicant can demonstrate satisfactory credit using one of the criteria listed in clauses (i) - (iv) of this subparagraph.

(i) - (iii) (No change.)

(iv) Victim of family violence[~~Domestic violence victim~~]: The residential applicant has been determined to be a victim of family violence as defined in Texas Family Code §71.004, by a family violence center as defined in Texas Human Resources Code §51.002, [~~or~~] by treating medical personnel, by law enforcement personnel, by the Office of a Texas District Attorney or County Attorney, or by the Office of the Attorney General. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence.

(C) (No change.)

(2) - (13) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 59. CONTINUING EDUCATION REQUIREMENTS

16 TAC §59.3

The Texas Department of Licensing and Regulation ("Department") proposes amendments to 16 Texas Administrative Code, §59.3, regarding continuing education requirements.

Texas Occupations Code, §51.405 requires the Texas Commission of Licensing and Regulation ("Commission") to recognize, prepare, or administer continuing education programs for license holders. In response to this legislative mandate, the Commission has adopted rules at 16 Texas Administrative Code, Chapter 59 to establish general requirements for continuing education providers and courses. The chapter contains rules of general applicability that currently apply only to the electricians program but eventually would apply to all occupations regulated by the Department that are subject to a continuing education requirement. The amendments to §59.3 add the following three programs to the coverage of Chapter 59: auctioneers and associate auctioneers, air conditioning and refrigeration contractors, and licensed court interpreters. These amendments will allow for providers of continuing education for those programs to begin registering with the Department and obtaining approval for courses. The provisions of Chapter 59, including fee provisions, would apply to those programs. Continuing education requirements that are specific to each of these programs will be contained in the rules for the respective programs.

This rule amendment is necessary to implement Texas Occupations Code, §51.405 with respect to the three referenced programs.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendment is in effect there will be additional costs to the Department from enforcing and administering the new rule and additional revenue generated from new fees. Because the number of potential continuing education providers is unknown, the Department is unable to estimate the additional costs or revenue. It is anticipated that there will be no net fiscal impact to state government because revenue from the new fees should be sufficient to cover additional costs. There will be no cost to local government as a result of enforcing or administering the amended rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit will be that continuing education taken by license holders will be subject to minimum standards. The public will benefit from standards that serve to increase or maintain the skills and competence of license holders, who in turn provide services to the public.

The probable economic costs to persons required to comply with the proposed rules and the effect on small or micro-businesses would be the following. Providers would be required to pay $250 annually, for each occupation for which the provider offers continuing education. For each course, the provider would be required to pay $100 annually, for each occupation to which the course is offered for continuing education credit. The total cost to a particular provider would depend on the number of courses offered and the number of occupations served by that provider. In addition, a provider would be charged $25 for a revised or duplicate registration.

A provider may incur some costs in furnishing copies of course materials to the Department as part of the course approval application. This cost would depend on the amount and dollar value of materials involved, which would vary by course, and so the

Department is unable to provide an estimate. There would be no adverse economic effect on small or micro-businesses.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1302, and 1802, and Texas Government Code, Chapter 57. No other statutes, articles, or codes are affected by the proposal.

§59.3. Purpose and Applicability.

These rules are promulgated to establish continuing education provider and course requirements for the following occupations regulated by the Department of Licensing and Regulation:

(1) Air conditioning and refrigeration contractors, as provided by Texas Occupations Code, Chapter 1302. Additional continuing education requirements relating to air conditioning and refrigeration contractors may be found in Chapter 75 of this title.

(2) Auctioneers and associate auctioneers, as provided by Texas Occupations Code, Chapter 1802. Additional continuing education requirements relating to auctioneers and associate auctioneers may be found in Chapter 67 of this title.

(3) Electricians, as provided by Texas Occupations Code, Chapter 1305. Additional continuing education requirements relating to electricians may be found in Chapter 73 of this title.

(4) Licensed court interpreters, as provided by Texas Government Code, Chapter 57. Additional continuing education requirements relating to licensed court interpreters may be found in Chapter 80 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

TRD-200500320
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 463-7348

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CHAPTER 67. AUCTIONEERS

16 TAC §67.25

The Texas Department of Licensing and Regulation ("Department") proposes a new rule at 16 Texas Administrative Code, §67.25, concerning continuing education requirements in the auctioneer program. Under Texas Occupations Code, §51.405, The Texas Commission of Licensing and Regulation ("Commission"), is required to recognize, prepare, or administer continuing education programs for license holders, and a license holder must participate in the programs to the extent required by the Commission to keep the person's license. The new rule implements that statutory requirement in the auctioneers program. General requirements for continuing education providers and courses are contained in 16 Texas Administrative Code, Chapter 59. The new §67.25 establishes requirements that are specific to the auctioneer program, for licensees, providers, and courses.

The new rule requires an auctioneer or associate auctioneer to complete six hours of continuing education in Department-approved courses to renew a license. The continuing education hours must include two hours of instruction in Texas state law and rules that regulate the conduct of auctioneers and associate auctioneers. The continuing education hours must be completed during the term of the current license or, in the case of a late renewal, within the one-year period prior to the date of renewal. A licensee may not receive credit for attending the same course more than one for one renewal period. A licensee is required to retain a copy of the certificate of completion for one year after the date of completion of the course. The rule requires that a provider's course must cover one or more specified topics to be approved by the Department. The rule applies to providers and courses upon the effective date of the rule. The rule applies to auctioneer and associate auctioneer licenses that expire on or after September 1, 2005.

This rule is necessary to implement Texas Occupations Code, §51.405, which requires the Commission to recognize, prepare, or administer continuing education programs for license holders.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the new rule is in effect there will be some additional costs to the Department in approving courses and enforcing requirements of the rule. It is anticipated that revenue from additional fees established in 16 Texas Administrative Code, Chapter 59 would be sufficient to offset additional costs to the state. Because the number of potential continuing education providers is unknown, the Department is unable to estimate the additional costs or revenue. There will be no cost to local government as a result of enforcing or administering the new rule.

Mr. Kuntz also has determined that for each year of the first five-year period the new rule is in effect, the public benefit will be that continuing education taken by auctioneer licensees will be subject to minimum standards. The public will benefit from standards that serve to increase or maintain the skills and competence of licensees, who in turn provide services to the public.

There will be no effect on small or micro-businesses as result of the proposed new rule. There are no anticipated economic costs to persons who are required to comply with the proposed new rule.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rule is proposed under Texas Occupations Code, Chapter 1802 and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. In particular, the rule implements Texas Occupations Code, §51.405.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1802. No other statutes, articles, or codes are affected by the proposal.

§67.25. Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) To renew a license as an auctioneer or associate auctioneer, a licensee must complete six hours of continuing education in courses approved by the department, including two hours of instruction in Texas state law and rules that regulate the conduct of auctioneers and associate auctioneers.

(c) The continuing education hours must have been completed within the term of the current license, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one year period immediately prior to the date of renewal.

(d) A licensee may not receive continuing education credit for attending the same course more than once for one renewal period.

(e) A licensee shall retain a copy of the certificate of completion for a course for one year after the date of completion. In conducting any inspection or investigation of the licensee, the department may examine the licensee's records to determine compliance with this subsection.

(f) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:

(1) Texas Occupations Code, Chapter 1802, Auctioneers;

(2) Title 16, Texas Administrative Code, Chapter 67, Auctioneers Administrative Rules;

(3) auction-related laws, such as the Uniform Commercial Code - Sales, Title 1, Chapter 2, Texas Business and Commerce Code §2.328 and the Deceptive Trade Practices-Consumer Protection Act, Chapter 17, Subchapter E, Texas Business and Commerce Code; or

(4) business practices, such as insurance, auction ethics, contracts, maintenance of trust accounts, and marketing.

(g) This section shall apply to providers and courses for auctioneers and associate auctioneers upon the effective date of this section.

(h) This section shall apply to auctioneer and associate auctioneer licenses issued under Texas Occupations Code, Chapter 1802, Subchapter B that expire on or after September 1, 2005.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

TRD-200500321
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 463-7348

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TITLE 25. HEALTH SERVICES

PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 601. INFORMED CONSENT

25 TAC §601.2, §601.3

The Texas Medical Disclosure Panel (panel) proposes amendments to §601.2 and §601.3, concerning informed consent. These amendments are proposed in accordance with the Texas Civil Practice and Remedies Code, §74.102, that requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. The sections cover procedures requiring full disclosure of specific risks and hazards--list A, and procedures requiring no disclosure of specific risks and hazards--list B.

The proposed amendment to §601.2 adds risks and hazards to the cardiovascular system. The amendment to §601.3 deletes certain procedures that are proposed for inclusion in §601.2.

Cindy Bednar, Facility Licensing Group, Regulatory Licensing Unit, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of administering the amendments as proposed.

Cindy Bednar has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amended sections will be the assurance that the panel continues to monitor the risks and hazards related to medical care and surgical procedures, which must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and the general form and substance of such disclosure. There will be no cost to micro-businesses, small businesses, or to persons who are required to comply with the amendments as proposed because regulated facilities already have an obligation to disclose risks and hazards related to the medical care and surgical procedures. The amendments will not add additional costs. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to the Texas Medical Disclosure Panel, Attention: Cindy Bednar, Facility Licensing Group, Regulatory Licensing Unit, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6646. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Civil Practice and Remedies Code, §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards and to prepare the form(s) for the treatments and procedures which do require disclosure.

The amendments affect Texas Civil Practice and Remedies Code, §74.102.

§601.2. Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A.

(a) (No change.)

(b) Cardiovascular system. [~~No procedures are assigned at this time.~~]

(1) Cardiac.

(A) Surgical.

(i) Coronary artery bypass, valve replacement.

(I) Acute myocardial infarction.

(II) Hemorrhage.

(III) Kidney failure.

(IV) Stroke.

(V) Sudden death.

(VI) Infection of chest wall/chest cavity.

(VII) Valve related delayed onset infection.

(ii) Heart transplant.

(I) Infection.

(II) Rejection.

(III) Death.

(B) Non-Surgical--Coronary angioplasty, coronary stent insertion, pacemaker insertion, AICD insertion, and cardioversion.

(i) Acute myocardial infarction.

(ii) Rupture of myocardium.

(iii) Life threatening arrhythmias.

(iv) Necessity for emergency open heart surgery.

(v) Hemorrhage.

(vi) Stroke.

(vii) Sudden death.

(viii) Device related delayed onset infection.

(C) Diagnostic.

(i) Cardiac catheterization.

(I) Allergic sensitivity reaction to injected contrast media.

(II) Acute myocardial infarction.

(III) Kidney damage from IV contrast medium.

(IV) Arrhythmias.

(V) Stroke.

(VI) Injury to vessels that may require immediate surgical intervention.

(ii) Electrophysiologic studies.

(I) Cardiac perforation.

(II) Life threatening arrhythmias.

(III) Injury to vessels that may require immediate surgical intervention.

(iii) Stress testing--Acute myocardial infarction.

(iv) Transesophageal echocardiography--Esophageal perforation.

(2) Vascular.

(A) Open surgical repair of aortic, subclavian, and iliac, artery aneurysms or occlusions, and renal artery bypass.

(i) Hemorrhage.

(ii) Paraplegia.

(iii) Kidney damage.

(iv) Stroke.

(v) Acute myocardial infarction.

(vi) Infection of graft.

(B) Endovascular stenting of any portion of the aorta and iliac artery.

(i) Hemorrhage.

(ii) Injury to vessels that may require immediate surgical intervention.

(iii) Conversion of procedure to open procedure.

(iv) Failure to deliver stent/endoluminal graft.

(v) Stent migration.

(vi) Paraplegia (for thoracic aorta procedures only).

(vii) Vessel occlusion.

(viii) Pseudo aneurysm.

(ix) Irreversible kidney damage.

(x) Impotence.

(C) Vascular thrombolysis.

(i) Hemorrhage.

(ii) Embolus.

(iii) Pulmonary complications.

(iv) Shock.

(c) - (s) (No change.)

§601.3. Procedures Requiring No Disclosure of Specific Risks and Hazards--List B.

(a) - (m) (No change.)

(n) Radiology.

(1) - (32) (No change.)

[~~(33) Pacemaker lead placement.~~]

(33) [~~(34)~~] Arthrography.

(34) [~~(35)~~] Percutaneous nephrostogram and/or internal stint or external drainage of the kidney.

(35) [~~(36)~~] Percutaneous transhepatic cholangiogram and/or internal stint or external drainage of the liver.

(36) [~~(37)~~] Percutaneous abscess drainage.

(o) - (p) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 14, 2005.

TRD-200500219

Melba W.G. Swafford, M.D.
Chairperson
Texas Medical Disclosure Panel
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 458-7236

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TITLE 28. INSURANCE

PART 2. TEXAS WORKERS' COMPENSATION COMMISSION

CHAPTER 102. PRACTICES AND PROCEDURES--GENERAL PROVISIONS

28 TAC §§102.3 - 102.5

The Texas Workers' Compensation Commission (the commission) proposes amendments to §§102.3, 102.4, and 102.5 in Chapter 102, concerning Practices and Procedures--General Provisions. The amendments are proposed to support the exchange of billing and reimbursement data, as well as electronic exchange of medical documentation in the workers' compensation system.

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

Currently, the majority of medical bills in the Texas workers' compensation system are submitted on paper forms to insurance carriers, third party administrators, or to medical bill review vendors. Minimal electronic billing occurs in the system. Insurance carriers report professional and hospital bill payment data to the commission in electronic file formats developed specifically for Texas workers' compensation. The commission does not currently collect pharmacy and dental data.

House Bill 2511 (HB 2511), passed in 1999 by the 76th Texas Legislature added Texas Labor Code §401.024 which allows the commission to adopt rules to permit or require electronic transmission in place of established forms, manners, or procedures that require paper processing. The proposed amendments are part of the commission's Electronic Billing and Reimbursement (eBill) project initiated to identify and implement an electronic billing solution for the Texas workers' compensation system. The eBill project is a component of the commission's Business Process Improvement (BPI) initiative; a coordinated set of projects that use technology to streamline agency processes to meet the goals set out in HB 2511.

Proposed amendments to Chapter 102, concerning Practices and Procedures--General Provisions, apply the provisions of that chapter to medical benefits; modify language to define electronic communication and electronic transmission; and include Claim and Medical Electronic Data Interchange (EDI) and electronic billing and reimbursement as electronic transmissions. Current rule language referencing the insurance carrier representative's physical mailbox is eliminated to support the transition to electronic mail communication under the BPI initiative.

Currently Chapters 124 through 139 are exempted from the provisions of §102.3, concerning Computation of Time. Proposed amendment to subsection 102.3(f) removes the reference to specific rules and states that if there is a conflict between this rule and provisions of another rule applicable to a specific type of benefit, the other rule prevails.

Proposed amendment to subsection (h) of §102.4, concerning General Rules for Non-Commission Communications, clarifies that the provision of (h)(2) refer to mail sent via the United States Postal Service regular mail. Subsection (k) is amended to expand the definition of written communication by including "submissions." Subsection (m) is amended to define electronic communications and electronic transmissions. This amendment is consistent with §401.024(a) of the Texas Workers' Compensation Act. Proposed new §102.4(p) establishes the date of receipt for non-commission communications. The current rule defines the term "sent date". Received date is important in medical bill submission and processing. Defining received date allows the commission to more effectively enforce current rules and proposed amendments.

Proposed amendments to subsection (d) of §102.5, concerning General Rules for Written Communications to and from the Commission, add the term "the earliest of" related to the received date for communications sent by mail and clarifies that the term mail applies to United States Postal Service regular mail. Amendments also remove language that references the insurance carrier Austin representative's physical mailbox at the commission's main office in Austin. This amendment allows the commission to implement use of an electronic mail box in place of the physical mailbox currently used by insurance carrier Austin representatives. Subsections (e) and (f) have been amended to be consistent with language in §102.4(m) and Texas Labor Code §401.024(a), which define electronic communication and electronic transmission. Amendments also include Claim and Medical Electronic Data Interchange (EDI) and electronic billing and reimbursement as electronic transmissions. Subsection (g) is amended to expand the definition of written communication by including "submissions." Subsection (h) is amended to define the meaning of electronic transmissions and is consistent with §401.024(a) of the Texas Workers' Compensation Act.

Stacey Jefferson, Director of the Business and Information Technology Services Division, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implication for state or local governments as a result of enforcing or administering the amended rules. Ms. Jefferson has determined that there will be no cost to the commission in enforcing or administering the amended rules.

Local government and state government as a covered regulated entity will be impacted in the same manner as described below in this preamble for persons and entities required to comply with the rules as amended.

Ms. Jefferson has also determined that for each year of the first five years the amended rules are in effect, the public benefit will be greater flexibility for system participants to exchange medical billing, reimbursement, and documentation data electronically.

Health care provider and insurance carriers should experience no direct economic impact from the requirement to comply with the proposed amendments.

Employers who purchase workers' compensation insurance should experience no direct economic impact from the requirement to comply with these proposed amendments because there is no additional administrative requirement for the employer.

There will be no economic costs to employees, as these amendments do not impose any requirements on injured employees.

There is no anticipated adverse economic impact on small businesses or micro-businesses as a result of these amendments. There will be no difference in anticipated costs of compliance for small and micro-businesses as compared to large businesses.

Comments on the proposed rule amendments must be received by 5:00 p.m., March 7, 2005. You may comment via the Internet by accessing the commission's website at *www.twcc.state.tx.us* and clicking on "Rules" then clicking on "Proposed Rules for Comment." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to *RuleComments@twcc.state.tx.us* or by mailing or delivering your comments to Linda Velasquez at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, 7551 Metro Center Drive, Suite 100, Austin, TX 78744.

Commenters are requested to clearly identify by number the specific rule and paragraph (e.g., 102.3(a)(1), 102.4(m), 102.5, etc.) commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part.

A public hearing on this proposal will be held on February 17, 2005 at the Austin central office of the commission (7551 Metro Center Drive, Suite 100, Austin, Texas). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communications at (512) 804-4430 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the commission's website at www.twcc.state.tx.us.

The amendments are proposed under the following statutes: Texas Labor Code §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code §402.042 which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form, manner, and procedure for transmission of information to the commission; Texas Labor Code §402.061, which authorizes the commission to adopt rules necessary for the implementation and enforcement of the Texas Workers' Compensation Act; Texas Labor Code §413.008 which authorizes the commission to collect certain medical bill and payment information from the insurance carrier; and HB 2511, 76th Texas Legislature which sets goals for the reduction of paper communication requirements.

No other code, statute, or article is affected by this rule action.

§102.3. Computation of Time.

(a) Due dates and time periods under this Act shall be computed as follows:

(1) computing a period of days. In counting a period of time measured by days, the first day is excluded and the last day is included.

(2) computing a period of months. If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

(3) unless otherwise specified, if the last day of any period is not a working day, the period is extended to include the next day that is a working day.

(b) A working day is any day, Monday-Friday, other than a national holiday as defined by Texas Government Code, §662.003(a) and the Friday after Thanksgiving Day, December 24th and December 26th. Use in this title of the term "day," rather than "working day" shall mean a calendar day.

(c) Normal business hours in the Texas workers' compensation system are 8:00 a.m. to 5:00 p.m. Central Standard Time with the exception of the Commission's El Paso field office whose normal business hours are 8:00 a.m. to 5:00 p.m. Mountain Standard Time.

(d) Any written or telephonic communications received other than during normal business hours on working days are considered received at the beginning of normal business hours on the next working day.

(e) Unless otherwise specified by rule, any written or telephonic communications required to be filed by a specified time will be considered timely only if received prior to the end of normal business hours on the last permissible day of filing.

(f) If there is a conflict between this rule and a specific provision of another rule that is applicable to a specific type of benefit, the other rule prevails. [~~This section does not apply to the computation of periods of entitlement to benefits. (Periods of entitlement to benefits are computed in accordance with specific rules on benefits set forth in Chapters 124 through 139 of this title (relating to Carriers: Required Notices And Mode of Payment; Education and Training Of Ombudsman; General Provisions Applicable To All Benefits; Benefits--Calculation Of Average Weekly Wage; Income Benefits--Temporary Income Benefits; Impairment And Supplemental Income Benefits; Benefits-Lifetime Income Benefits; Death Benefits--Death And Burial Benefits; General Medical Provisions; Benefits-Guidelines For Medical Services, Charges, and Payments; And Benefits-Vocational Rehabilitation)).~~]

§102.4. General Rules for Non-Commission Communications.

(a) All written communications to a claimant (who is either an employee, an employee's legal beneficiary, or a subclaimant) shall be sent to the most recent address or facsimile number supplied by the claimant. If an address has not been supplied by the claimant, the most recent address provided by the employer shall be used.

(b) After an insurance carrier, employer, or health care provider is notified in writing that a claimant is represented by an attorney or other representative, copies of all written communications related to the claim to the claimant shall thereafter be mailed or delivered to the representative as well as the claimant, unless the claimant requests delivery to the representative only.

(c) Insurance carriers shall provide a toll free telephone number for receipt of communication from claimants and/or their representatives with a sufficient quantity of lines to service their volume of business.

(d) Insurance carriers and health care providers shall provide telephone and facsimile numbers in sufficient quantity of lines to service the volume of business for receiving required verbal and written communications regarding workers' compensation claims.

(e) Insurance carriers must ensure effective and timely communication with claimants and other parties in the system. If a claimant is unable to communicate with a carrier due to a language barrier and the claimant is unable to provide a person who he or she trusts to serve as a translator, the carrier shall provide a means to translate except as needed for a Commission proceeding. The claimant shall not be required to contract with or otherwise employ a translator.

(f) When a claimant contacts a carrier and requests a response regarding their claim, the response shall be verbally provided or sent in writing by the carrier within five working days of receiving the request, unless the request is redundant or the response is duplicative of information previously provided.

(g) Insurance carriers shall employ or provide sufficient numbers of person, including adjusters appropriately licensed by the Texas Department of Insurance to meet their obligations under the Act and this title.

(h) Unless the great weight of evidence indicates otherwise, written communications shall be deemed to have been sent on:

(1) the date received, if sent by fax, personal delivery or electronic transmission or,

(2) the date postmarked if sent by mail via United States Postal Service regular mail, or, if the postmark date is unavailable, the later of the signature date on the written communication or the date it was received minus five days. If the date received minus five days is a Sunday or legal holiday, the date deemed sent shall be the next previous day which is not a Sunday or legal holiday.

(i) A carrier shall maintain adjuster's notes on activities and verbal communications involved with the administration of a claim, with the exception of privileged attorney-client communications. The adjuster's notes shall, at a minimum, include the date of the activity or communication, the identity of the carrier staff involved in the contact, the person contacted by or contacting the carrier and a summary of the activity or communication.

(j) An insurance carrier, employer or health care provider that receives a written communication related to a workers' compensation claim shall date stamp or otherwise annotate the document indicating the date the written communication was received.

(k) Written communications include all records, reports, notices, filings, submissions, and other information contained either on paper or in an electronic format.

(l) For purposes of this title, if a written communication is required to be filed with both the Commission and another person by the Act or Commission rules, the other person shall be presumed to have received the written communication on the date the Commission received its copy, unless the other person annotated the date of receipt as provided in subsection (j) of this section or the means of delivery of the communication was different. In this situation, the other person has the burden of proving that it did not receive or timely receive the written communication.

(m) Electronic communication [~~transmission~~] refers to the electronic transmission of claim or medical information. [~~by means such as e-mail~~] Electronic transmission is defined as transmission of information by facsimile, electronic mail, electronic data interchange, or any other similar method and does not include telephonic communication. Electronic communication for reporting purposes is[~~or electronic filing as~~] described in §102.5(e) of this chapter (relating to General Rules for Written Communications to and from the Commission), §124.2 of this title (relating to Carrier Reporting and Notification Requirements), and §134.802 of this title (relating to Insurance Carrier [~~Carrier's Submission of~~] Medical Electronic Data Interchange [~~Bills~~] to the Commission).

(n) If the Commission receives an allegation that a carrier or health care provider has failed to provide a sufficient number of toll-free telephone, toll telephone, or facsimile lines or that a carrier has not provided a sufficient number of adjusters as required by this section, unless the violation appears to be willful or intentional, the Commission will not issue a monetary penalty or other sanctions prior to:

(1) notifying the alleged violator of the allegation;

(2) affording the alleged violator the opportunity to either disprove the allegation or provide mitigating information; and

(3) if the violator is unable to disprove the allegation, issuing a written warning to the violator allowing a reasonable grace period of not less than 30 days to correct the noncompliance. The grace period may be less than 30 days if the noncompliance prevents the violator from fulfilling other obligations under this title.

(o) A violation as described in subsection (n) will be considered willful or intentional if the violator has been advised of complaints such that the violator knew or should have known that the number of toll-free telephone, toll telephone, facsimile lines, or adjusters was insufficient and the violator cannot establish that it made good faith efforts to correct the deficiency or if the violator otherwise exhibited willful or intentional conduct.

(p) For purposes of determining the date of receipt for non-commission written communications, unless the great weight of evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed via United States Postal Service regular mail; or the date faxed or electronically transmitted.

§102.5. General Rules for Written Communications to and from the Commission.

(a) After the Commission is notified in writing that a claimant is represented by an attorney or other representative, all copies of written communications to the claimant shall thereafter be sent to the representative as well as the claimant, unless the claimant requests delivery to the representative only. However, copies of settlements, notices setting benefit review conferences and hearings, and orders of the Commission shall always be sent to the claimant regardless of representation status. All written communications to the claimant or claimant's representative will be sent to the most recent address or facsimile number supplied on either the employer's first report of injury, any verbal or written communication from the claimant, or any claim form filed by the carrier via written notice or electronic transmission.

(b) All written communications to persons other than carriers and claimants will be sent to the most recent address or fax number reported to the Commission by the intended recipient or, in the absence of an address or fax number supplied by the intended recipient, to an address or fax number identified by the Commission.

(c) Unless otherwise specified by rule, written communications required to be filed with the Commission should be sent to the local Commission field office managing the claim, however, written communications shall also be accepted at any Commission office.

(d) For purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of evidence indicates otherwise, the Commission shall

deem the received date to be the earliest of: five days after the date mailed via United States Postal Service regular mail; the first working day after the date the written communication was placed in a carrier's Austin representative box [~~located at the Commission's main office in Austin as indicated by the Commission's date stamp~~]; or the date faxed or electronically transmitted.

(e) Electronic[~~Electronically filed records or~~] communications shall be filed or submitted in the format, form, and manner prescribed by the Commission. Electronic communication [~~A record~~] is considered filed [~~when submitted electronically~~] if on the date received, the record meets the required edit checks to insure data quality. Electronic communication is defined [~~filing is different than "electronic transmission" as described~~] in subsection (h) of this section, §102.4(m) of this chapter (relating to General Rules for Non-Commission Communications), and §134.802 of this title (relating to Insurance Carrier[~~Carrier's Submission of~~] Medical Electronic Data Interchange [~~Bills~~] to the Commission). Claim Electronic Data Interchange records filed pursuant to §124.2 of this title (relating to Carrier Reporting and Notification Requirements):

(1) which do not pass the required edit checks in accordance with the International Association of Industrial Accident Boards and Commissions (IAIABC) and Texas EDI Implementation Guides shall be rejected back to the trading partner. Rejected records are not considered received by the Commission and must be corrected and re-submitted. Rejected records must be re-submitted by the original due date to be considered timely filed;

(2) which are accepted but in which the Commission identifies errors shall be corrected and resubmitted, in accordance with the Texas EDI Implementation Guide, within 90 days of receipt of the notification of the acceptance with errors through the corresponding transaction acknowledgment.

(f) Unless the great weight of evidence indicates otherwise, written communications received by the Commission by means other than electronic filing described in subsection (e) of this section and §124.2 of this title, and §134.802 of this title (relating to Insurance Carrier [~~Carrier's Submission of~~] Medical Electronic Data Interchange[~~Bills~~] to the Commission) shall be deemed to have been sent on:

(1) the date received if sent by fax, personal delivery or electronic transmission or,

(2) the date postmarked if sent by United States Postal Service regular mail, or, if the postmark date is unavailable, the later of the signature date on the written communication or the date it was received minus five days. If the date received minus five days is a Sunday or legal holiday, the date deemed sent shall be the next previous day which is not a Sunday or legal holiday.

(g) Written communications include all records, reports, notices, filings, submissions, and other information contained either on paper or in an electronic format.

(h) Electronic transmission is defined as [~~refers to~~] transmission of information by [~~means such as~~] facsimile, electronic mail, [~~e-mail~~] electronic data interchange or any other similar method and does not include telephonic communication[~~or electronic filing as described in subsection (e) of this section, §124.2 of this title and §134.802 of this title~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

TRD-200500292
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 804-4287

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CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER I. PROVIDER BILLING PROCEDURES

28 TAC §134.800, §134.802

The Texas Workers' Compensation Commission (the commission) proposes amendments to §134.800 and §134.802 in Chapter 134, concerning Benefits--Guidelines for Medical Services, Charges and Payments. The amendments are proposed to support the exchange of billing and reimbursement data, as well as electronic exchange of medical documentation in the workers' compensation system.

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

Currently, the majority of medical bills in the Texas workers' compensation system are submitted on paper forms to insurance carriers, third party administrators, or to medical bill review vendors. Minimal electronic billing occurs in the system. Insurance carriers report professional and hospital bill payment data to the commission in electronic file formats developed specifically for Texas workers' compensation. The commission does not currently collect pharmacy and dental data.

House Bill 2511 (HB 2511), passed in 1999 by the 76th Texas Legislature added Texas Labor Code §401.024 which allows the commission to adopt rules to permit or require electronic transmission in place of established forms, manners, or procedures that require paper processing. The proposed amendments are part of the commission's Electronic Billing and Reimbursement (eBill) project initiated to identify and implement an electronic billing solution for the Texas workers' compensation system. The eBill project is a component of the commission's Business Process Improvement (BPI) initiative; a coordinated set of projects that use technology to streamline agency processes to meet the goals set out in HB 2511.

Proposed amendments to Chapter 134, concerning Benefits--Guidelines for Medical Services, Charges, and Payments, specify that the use of standard medical billing forms is applicable to medical bills submitted in paper form and does not apply to medical bills submitted electronically. Additionally, the proposed amendments clarify that a carrier's reporting of medical billing data to the commission includes payment data.

Proposed amendments to subsections (a) and (e) of §134.800, concerning Required Billing Forms and Instructions, are amended to allow health care providers and insurance carriers to exchange medical bill data, payment data, and documentation

electronically by mutual agreement. The proposed amendment requires that the agreement must include stipulations defining a complete electronic medical bill and the method and manner related documentation is submitted to the insurance carrier. The proposed amendments exclude transmission by facsimile and electronic mail in the mutual agreement provision. Proposed amendments replace the term "Commission" in place of the "Medical Review Division" in subsection (f) and eliminate subsection (g).

Amendments to §134.802, concerning Insurance Carrier's Submission of Medical Bills to the Commission, adds the phrase "and payment" to the insurance carrier requirement to submit medical billing data to the commission. The amendment does not change current reporting processes or requirements. It makes the language consistent with the intent to collect medical bill and payment information, which includes payment, denial, and refund data. The amendment also changes the title from "Insurance Carrier's Submission of Medical Bills to the Commission" to "Insurance Carrier Medical Electronic Data Interchange to the Commission" and is consistent with the commission's BPI Medical EDI project.

Stacey Jefferson, Director of the Business and Information Technology Services Division, has determined that for the first five-year period the proposed rule is in effect there may be fiscal implications for state or local governments as a result of enforcing or administering the rule. There is no adverse fiscal impact for state or local governments that do not change medical billing and reimbursement processes, as the amendments do not mandate electronic exchange of billing and reimbursement data. The potential fiscal impact is related to administrative costs affected by a reduction in paper processing for state or local governments that choose to implement electronic billing and reimbursement. Start up costs anticipated to implement an electronic interface may be offset by a reduction in administrative costs for paper processing, however, the overall impact cannot be quantified at this time.

Local government and state government as a covered regulated entity will be impacted in the same manner as described below in this preamble for persons and entities required to comply with the rules as amended.

Ms. Jefferson has also determined that for each year of the first five years the amended rules are in effect, the public benefit will be greater flexibility for system participants to exchange medical billing, reimbursement, and documentation data electronically.

There is no anticipated economic impact to those persons or entities that choose to continue their existing medical bill submission and processing practices, as these amendments do not mandate electronic exchange of information.

Health care providers and insurance carriers, including certified self-insured employers, who are not already exchanging data electronically but choose to initiate electronic processes may experience start up costs related to implementation of an electronic interface. It is expected that start up costs will likely be offset by a decrease in overall administrative costs for generating and processing paper medical bills and documentation.

Employers who purchase workers' compensation insurance should experience no direct economic impact from the requirement to comply with these proposed amendments because there is no additional administrative requirement for the employer.

There will be no economic costs to employees, as these amendments do not impose any requirements on injured employees.

There may be costs of compliance for small businesses that do not currently exchange data electronically but choose to implement electronic interfaces. Start up costs related to implementation of electronic interfaces may be offset by a decrease in overall administrative costs related to paper processing of medical bills and data.

There is no anticipated adverse economic impact on small businesses or micro-businesses as a result of these amendments, as electronic exchange of information is not mandated. There will be no difference in anticipated costs of compliance for small and micro-businesses as compared to large businesses.

Comments on the proposed rule amendments must be received by 5:00 p.m., March 7, 2005. You may comment via the Internet by accessing the commission's website at *www.twcc.state.tx.us* and clicking on "Rules" then clicking on "Proposed Rules for Comment." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to *RuleComments@twcc.state.tx.us* or by mailing or delivering your comments to Linda Velasquez at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, 7551 Metro Center Drive, Suite 100, Austin, TX 78744.

Commenters are requested to clearly identify by number the specific rule and paragraph (e.g., 134.800 (a), 134.802(a), etc.) commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part.

A public hearing on this proposal will be held on February 17, 2005 at the Austin central office of the commission (7551 Metro Center Drive, Suite 100, Austin, Texas). Those persons interested in attending the public hearing should contact the Commission's Office of Executive Communications at (512) 804-4430 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the commission's website at *www.twcc.state.tx.us*.

The proposed amendments are proposed under the following statutes: Texas Labor Code §402.061, which gives the Commission the authority to adopt rules as necessary to implement and enforce the Act; Texas Labor Code §401.024, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code §402.042, which authorizes the executive director to enter orders as authorized by the statute as well as to prescribe the form manner and procedure for transmission of information to the Commission; Texas Labor Code §408.025, which requires the Commission to specify by rule the reports a health care provider is required to file; Texas Labor Code §408.027, which provides for insurance carrier payment of health care providers; Texas Labor Code §413.007, which directs the Medical Review Division to maintain a statewide database of medical billing information; Texas Labor Code §413.008 which authorizes the commission to collect certain medical bill

and payment information from the insurance carrier; and HB 2511, 76th Texas Legislature which sets goals for the reduction of paper communication requirements.

No other code, statute, or article is affected by this rule action.

§134.800. Required Billing Forms and Information.

(a) Except as provided by §134.801 of this title (relating to Submitting Medical Bills for Payment), health care providers shall submit medical bills for payment on standard forms used by the Centers for Medicare and Medicaid Services (CMS), [~~or~~] applicable forms prescribed in subsections (b), [~~and~~] (c), and (d), completed in accordance with Commission instructions, or electronic transmissions submitted in accordance with subsection (e) of this section. All information on medical bills shall be legible when submitted.

(b) Except as provided in subsections (c), [~~and~~] (d), and (e) of this section, all health care providers, as defined in §401.011 of the Texas Labor Code, shall submit medical bills using national standard health insurance claim forms, prepared according to Commission instructions.

(c) Pharmacists shall submit bills using the Commission form TWCC-66, Statement for Pharmacy Services, prepared according to Commission instructions.

(d) Dentists shall submit bills using a billing form currently approved by the American Dental Association prepared according to Commission instructions.

(e) Health care providers and the insurance carrier may mutually agree to exchange medical bill and reimbursement data electronically. The mutual agreement shall stipulate the elements that constitute a complete electronic medical bill and the method and manner related documentation is submitted to the insurance carrier. For the purposes of this subsection, electronic billing and reimbursement excludes transmission by facsimile or electronic mail. [~~may submit medical bills by facsimile or electronic transmission, when mutually agreed upon between the health care provider and the insurance carrier, unless the bill and/or supporting documentation cannot be sent by those media, in which case the health care provider shall send the documentation by mail or personal delivery.~~]

(f) The Commission [~~Medical Review Division~~] may order the health care provider to reimburse a carrier when the carrier pays the health care provider in excess of the amount allowed by the appropriate Commission fee guideline.

~~[(g) This rule shall apply to all dates of service on or after September 1, 2004.]~~

§134.802. Insurance Carrier ~~[Carrier's Submission of]~~ Medical Electronic Data Interchange ~~[Bills]~~ to the Commission.

(a) The insurance carrier shall submit medical bill and payment [~~billing~~] data to the Commission within 30 days after the insurance carrier makes payment, denies payment, or receives a refund of overpayment on a medical bill.

(b) Insurance carriers shall submit medical bill and payment [~~billing~~] data electronically in the form and format prescribed by the Commission.

(c) The Commission shall prescribe the form, format, and content of the required medical bill and payment [~~billing~~] data submission.

(d) This rule shall apply to all dates of service on or after July 15, 2000, for facility and professional medical services except pharmacy and dental services.

(e) This rule shall apply to all dates of service on or after January 1, 2005, for pharmacy and dental services in addition to the already required facility and professional medical services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

TRD-200500293
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 804-4287

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CHAPTER 166. WORKERS' HEALTH AND SAFETY--ACCIDENT PREVENTION SERVICES

28 TAC §166.4, §166.6

The Texas Workers' Compensation Commission ("commission") proposes amendments to rules 28 TAC §166.4, concerning Required Accident Prevention Services and §166.6, concerning Exchange of Information for the Inspection. The amendments are proposed pursuant to §413.021, of the Texas Labor Code, 77th Legislature, 2001. The proposed amendments add another category of information (i.e. the availability of return to work coordination services) to the list of what must be included in an existing required notice to policyholders. The information is required to be provided by the insurance carrier to increase awareness of the carrier's available service regarding injured employee return-to-work coordination. The amendments also include adding documentation related to employee return-to-work coordination services to an existing list of information that investigators can require be made available.

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

House Bill 2600, passed by the 77th Texas Legislature, 2001, added Section 413.021 to the Texas Labor Code, which requires insurance carriers to (with the agreement of a participating employer) provide employers with return-to-work coordination services as necessary to facilitate an employee's return to employment. Insurance carriers must notify employers of the availability of return-to-work coordination services. In offering the services, insurance carriers must target employers without return-to-work programs and focus return-to-work efforts on workers who begin to receive temporary income benefits. These services may be offered by insurance carriers in conjunction with the accident prevention services provided under Section 411.061. Texas Labor Code Section 413.021(b) provides examples of the types of return-to-work services that can be provided.

The proposed change to §166.4 would add notification of return-to-work coordination services to the section title, to the notification topics included in the written solicitation of comments provided to each policyholder (subsection (c)(2)(E)), and to the notice required on the declarations page or on the front of policies that are delivered or issued for delivery in Texas (subsection (c)(8)). In order to allow division inspectors to collect return-

to-work documentation, proposed Section 166.6 would add return-to-work coordination services information to the list of types of information that may be requested during agency inspections. The gathering of return-to-work information during these inspections is not intended to prescribe the organization of return-to-work functions within the structure of the entity being inspected. Rather, the agency would be taking advantage of this on-site inspection as an opportunity to gather documentation and verify that return-to-work coordination services are being offered. This constitutes the most efficient use of limited agency resources.

Mr. William DeCabooter, Director of the Workers' Health and Safety Division, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule because the additional information will be provided to the agency within an existing process and is therefore not expected to require additional staff. Local government and state government as covered regulated entities will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Mr. DeCabooter has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be increased interaction between the insurance carrier and employer to facilitate the injured employee's return to employment. This should, in turn, result in better return-to-work services provided to injured employees. Improving return-to-work statistics in Texas would be a benefit to all system participants. Injured employees will benefit from staying at work and appropriate early return to work. Studies show that injured employees who return to employment as soon as possible, experience better physical, mental, and emotional health and have a better quality of life. Employers should benefit from reduced premiums based on earlier return to work of injured employees, which will impact income benefits.

There will be no anticipated significant economic costs to persons who are required to comply with the rule as proposed (minimal incidental costs may be associated with any necessary changes to carrier forms and procedures).

There will be no adverse economic impact on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses and micro-businesses as compared to large businesses.

Comments on the proposal must be received by 5:00 p.m., March 7, 2005. You may comment via the Internet by accessing the commission's website at *www.twcc.state.tx.us* and then clicking on "Rules" at the top of the page and then clicking on "Proposed Rules for Comment." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to *RuleComments@twcc.state.tx.us* or by mailing or delivering your comments to Linda Velasquez, Legal Services, Mailstop #4-D, Texas Workers' Compensation Commission, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1609.

Commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect.

A public hearing on this proposal will be held on February 17, 2005 at the Austin central office of the commission (7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1609). Those persons interested in attending the public hearing should contact the commission's Office of Executive Communication at (512) 804-4430 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the commission's website at *www.twcc.state.tx.us*.

The amendment is proposed under Texas Labor Code §413.021 (as amended), Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, the Texas Labor Code, §411.061, which requires an insurance company to provide accident prevention services, and Texas Labor Code §411.063-.068, which requires an insurance company to provide qualified accident prevention services, set certain specifications for the program, require an insurance company to annually submit information to the commission, require biennial inspections by the division, and provide for an administrative penalty for violation of the requirements.

No other code, statute, or article is affected by this rule action.

§166.4. Required Accident Prevention Services <u>and Notification of Return-to-Work Coordination Services</u>.

(a) An insurance company writing workers' compensation insurance in Texas shall maintain or provide accident prevention facilities and services and shall have them inspected by the division. An insurance company writing only excess or reinsurance is not required to maintain or provide such facilities or services.

(b) An insurance company shall provide accident prevention services to policyholders at no additional charge.

(c) An accident prevention service program as required by the Texas Labor Code, §411.061, shall provide, at a minimum:

(1) an evaluation of the policyholder's need for accident prevention services every 12 months based on the following criteria:

(A) hazard, including classification by hazard group, probability of serious or catastrophic type accidents, probability of frequent accidents, and probability of occupational illness or disease;

(B) experience, including loss ratio, experience modifiers, frequency rate, and severity rate, and

(C) size, including total number of employees, number of locations per policyholder business and number of employees per location.

(2) service in accordance with the following requirements:

(A) provide services requested by policyholders within 15 days of the date services were first requested, if appropriate services can be provided from the insurance company offices and within 30 days of the date of first request, if the services require an on-site visit. Services may be provided at a later time if circumstances require and the time is agreed upon by the policyholder.

(B) an on-site visit, or provision of other appropriate services, on a periodic basis and at least every 12 months to each policyholder with:

(i) a premium of less than $25,000 and a loss ratio greater than 100%; or

(ii) a premium of $25,000 or more;

(C) a mandatory on-site visit on a periodic basis and at least every 12 months to each policyholder with:

(i) a premium of $25,000 or more and a loss ratio greater than 100%; or

(ii) a premium between $5,000 and $24,999, inclusive, and a loss ratio greater than 250%;

(D) a visit to the insured within three working days of notification and/or knowledge of a fatality. If the fatality occurred outside of Texas or was the result of an accident on a common carrier, no visit is required; and

(E) written solicitation of comments from each policyholder, at least every 12 months, to determine the need for safety information or assistance. Such letter shall specifically explain that accident prevention services, including surveys, recommendations, training programs, consultations, analysis of accident causes, industrial hygiene and industrial health services are available at no additional charge and shall be provided upon request directly to the policyholder. This requirement is in addition to the requirements in paragraph (8) of this subsection. The letter shall also include the insurance carrier's notification to the employer of the availability of return-to-work coordination services;

(3) a sufficient number of qualified personnel performing the duties of field safety representative to provide service at the frequency required in paragraph (2) of this subsection;

(4) written procedures for:

(A) determining the appropriate accident prevention services to be provided to a policyholder;

(B) the time frame and manner in which the services identified under paragraph (2) of this subsection will be delivered to a policyholder;

(C) providing safety training to policyholders and providing promotional and course materials that are available for each safety training program; and

(D) providing written reports to the insurance company and the policyholders which identify hazardous conditions and work practices on the policyholder's premises;

(5) written records, reports, and evidence of all accident prevention services provided to each policyholder;

(6) written notification at least every 12 months to each policyholder of actual claims experience;

(7) written documentation of loss analysis at least every 12 months to each policyholder with:

(A) a premium of $25,000 or more; or

(B) a premium between $5,000 and $24,999, inclusive, and a loss ratio of greater than 250%;

(8) evidence that each workers' compensation insurance policy delivered or issued for delivery in Texas contains the following notice on the declarations page or on the front of the policy in at least 10-point bold type: "(Name of company) is required by law to provide its policyholders with certain accident prevention services as required by the Texas Labor Code, §411.066, at no additional charge and return-to-work coordination services as required by Texas Labor Code §413.021. If you would like more information, call (insurance company's loss control division or provider's telephone number). If you have any questions about this requirement, call the Division of Workers' Health and Safety, Texas Workers' Compensation Commission at 1-800-687-7080 [~~452-9595~~]."; and

(9) annual reports as required by §166.3 of this title (relating to Annual Report to the Commission).

§166.6. Exchange of Information for the Inspection.

(a) Pre-Inspection Exchange of Information.

(1) At least 45 days prior to the date set for inspection, the insurance company shall provide the division with:

(A) a list of policyholder accounts by policyholder name, policy number, effective date or expiration date of policy, written premium before any adjustments, including deductibles or discounts, and Texas locations. The list shall be taken from the insurance company's most current records, separated by affiliated companies, arranged in descending order by premium, and include all policies which had been in effect or have been written since the policyholder list was prepared for the last inspection of the insurance company's accident prevention services by the division; and

(B) a list of the name, location, status (whether employee or contractor), and proof of qualifications as set forth in the Texas Labor Code §411.062 and §166.8 of this title (relating to Qualification of Field Safety Representatives) of each person acting as a field safety representative for the insurance company.

(2) Within ten days of receipt of the list, the division shall select the specific accounts to be evaluated and notify the insurance company of those accounts. The list of policyholder accounts will be kept confidential to the extent permitted by law. The division shall return the list to the insurance company at the time of the inspection.

(3) At least 35 days prior to the date set for inspection, the insurance company shall provide the division with the completed Accident Prevention Services Questionnaire provided by the commission. The questionnaire shall have been completed and signed by an individual authorized by the insurance company to be responsible and whose signature has been notarized on the questionnaire form.

(4) For each account selected by the division, the insurance company shall prepare an accident prevention services worksheet on the form prescribed by the commission.

(5) At least five days prior to the date of the inspection, the insurance company shall file the completed worksheets with the division.

(b) Information to be made available at the inspection.

(1) The insurance company shall make available the following information, as of the date of the last inspection or start of writing workers' compensation coverage, whichever is later, at the time and site of the inspection:

(A) the loss control files corresponding to the requested worksheets;

(B) evidence that the policyholder has been provided the notice required by this chapter and any other material used to notify policyholders of the accident prevention services;

(C) a copy of all accident prevention services procedures;

(D) a copy of loss runs for each selected account that will include:

(i) number of injuries;

(ii) accident or illness types;

(iii) body parts involved;

(iv) injury causes; and

(v) fatalities;

(E) if continuing education or training are required by the commission, a record of any training received by the field safety representatives since the previous inspection;

(F) a sample of policyholder training materials, audio-visual aids, and training programs; and

(G) other information requested by the inspector which is necessary to complete the inspection.

(2) The insurance company shall also provide the information required by subsection (a) of this section which is not already in the possession of the division.

(3) Upon request from the division inspector, the insurance company shall provide copies of documents requested, accompanied by a notarized Business Record Affidavit. Information which may be requested shall be limited to records of surveys, consultations, recommendations, training provided, training materials available, loss runs and loss analyses, industrial health and hygiene services, accident prevention procedures and field safety representative qualifications. In addition, upon request from the division inspector, the insurance company shall provide return-to-work coordination services information. The Business Record Affidavit form shall be provided by the inspector and shall be completed and signed by an individual authorized by the insurance company.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

TRD-200500291
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 804-4287

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board (the board) proposes the repeal of existing §371.4 and proposes amendments to §§371.14, 371.22, 371.24, and 371.51, concerning the Drinking Water State Revolving Fund.

The board proposes the repeal of §371.4, Date of Applicability of Rules, relating to the term of the applicability of the rules. As currently written, §371.4 applies the provisions of this chapter to financial assistance applications received during federal fiscal years 1997 through 2003. At the time of adoption of this section, it was not anticipated that the board would continue to receive federal funds under this program. The board proposes to repeal this section so that these rules will continue to apply to all applications received under this program.

The board proposes to delete §371.14(a)(3). This paragraph currently authorizes the board to make expenditures in federal fiscal years 1996 and 1997 to delineate and assess source water protection projects and providing that such funds must be obligated within four years of the rule adoption. The Texas Commission on Environmental Quality is the state agency responsible for this activity and has reported successfully completing these projects. Consequently, the board proposes the deletion of this provision as appropriate.

The board proposes an amendment to §371.22, concerning Administrative Cost Recovery to clarify that the administrative cost recovery fee is a non-fundable fee which is based on the amount of the loan at the time of closing. Though the existing language has been interpreted and applied by the board in this manner, this amendment is proposed in order to insure that loan recipients fully appreciate the nature of the fee payment.

The board proposes to amend §371.24(b)(7) concerning the determination of an area that is eligible for Loan Subsidies under the Disadvantaged Community Program. Currently, this paragraph calculates the adjusted median household income specifically using 1990 income data and requiring that such data be adjusted using the 1990 Texas Consumer Price Index. The board proposes to amend this paragraph to provide that the median household income may be determined from the most recent United States Census data and that it will be adjusted using the most recent Texas Consumer Price Index.

The board proposes to amend §371.24(d) concerning additional project costs in excess of the project costs identified in the intended use plan. Currently, this subsection provides that project costs in excess of the project costs identified on the intended use plan will be provided through the Water Supply Account of the Texas Water Development Fund. With the creation of the Texas Water Development Fund II, the reference to the Water Supply Account is no longer appropriate. This subsection is amended to reflect this change.

The board proposes to amend §371.51(c) concerning the commitment date of a loan made by the board. Currently, the intent of the rule is to identify a date certain by which time the applicant must close the loan with the board. This subsection, however, is entitled "Commitment Date" which is misleading since the subsection does not address the date on which the commitment is made by the board but rather the date by which the loan must be closed. The title of the subsection is therefore amended to be "Closing Date." Further, as currently written, the subsection requires that the closing date must occur 24 months from the day in the month of the board meeting at which the commitment was made. As applied, the applicant must close the loan or request an extension of the closing date before that day in the 24th month. If the board schedules its meeting on a day later in that 24th month, the applicant is effectively limited to closing the loan or requesting a time extension within 23 months rather than the intended 24 months. The board did not intend this result and does not make a similar requirement for its other programs. The board proposes to amend §371.51(c) so that the closing date must occur on any day within the 24th calendar month following

the date that the board made the commitment. The intent of this proposed amendment is that, as an example, if the board makes a commitment on April 15, 2005, the applicant must close the loan on any day in April 2007 or must request and obtain an extension of the closing date from the board at the board's meeting in April 2007. In this manner, the applicant receives the benefit of the full 24 calendar months in which to act on the commitment and makes this program consistent with the board's other programs relative to the closing date requirement. The board proposes to further amend this subsection by deleting the language relating to extending the time to close the loan so that it can be placed in a new subsection. The board proposes this amendment in order to improve the clarity of the respective requirements.

The board proposes a new subsection (d) to §371.51, relating to the extension of the closing date. As currently written, subsection (c) refers to extending the commitment date. However, since the commitment date is the date of the original board action, there is no action that can occur that can extend that date. The intention of the current provision, rather, is to extend the date by which the closing must occur. Further, as currently configured, two distinct requirements are combined in one sentence: the requirement to close the loan and the method to extend the closing date. This combination unnecessarily convolutes these requirements, which creates unnecessary ambiguity. By creating a proposed new subsection, the two distinct requirements are separated in order to clarify the respective requirements. Additionally, the proposed new subsection (d) now specifies that a request to extend the closing date must be submitted by the applicant in writing and identify a reasonable basis for the extension. These requirements are included because the board believes that it is important to the effective operation of the program to close these loans in a timely manner. Therefore, this proposed new subsection requires that any request to extend a closing should be submitted in writing and identify a justifiable reason to move the closing date. Since the initial closing date is set by the board in this rule and because of the importance of closing loans to the effective operation of the program, this proposed new subsection also requires that the board approve any extension to the closing date. It is the intent of the proposed new subsection that the board will determine whether the basis to extend as identified by the applicant is reasonable in order for the extension to be approved.

Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period the repeal and amendments are in effect there will not be fiscal implications on state and local government as a result of enforcement and administration of the repeal and amended sections.

Ms. Callahan has also determined that for the first five years the repeal and amendments, as proposed, are in effect the public benefit anticipated as a result of enforcing the proposed repeal and amended sections will be to have more streamlined and easily understandable rules. Ms. Callahan has determined there will not be economic costs to small businesses or individuals required to comply with the repeal and amendments as proposed.

Comments on the proposal will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, Deputy Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to jonathan.steinberg@twdb.state.tx.us or by fax at (512) 463-5580.

SUBCHAPTER A. INTRODUCTORY PROVISIONS

31 TAC §371.4

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Water Development Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the SRF program.

The statutory provision affected by the proposed repeal is Texas Water Code, Chapter 15, Subchapter J.

§371.4. Date of Applicability of Rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 19, 2005.

TRD-200500260
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: March 9, 2005
For further information, please call: (512) 475-2052

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SUBCHAPTER B. PROGRAM REQUIREMENTS

31 TAC §§371.14, 371.22, 371.24

The amendments are proposed under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the SRF program.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapter 15, Subchapter J.

§371.14. Other Authorized Activities.

(a) In General. In addition to projects funded under §371.13 of this title (relating to Projects Eligible for Assistance) the board may take each of the following actions.

(1) - (2) (No change.)

~~[(3) Make expenditures from the capitalization grant of the State for fiscal years 1996 and 1997 to delineate and assess source water protection areas in accordance with §1453, except that funds set aside for such expenditure shall be obligated within four fiscal years.]~~

(3) [~~(4)~~] Make expenditure from the fund for the establishment and implementation of wellhead protection programs under §1428.

(b) (No change.)

§371.22. Administrative Cost Recovery.

(a) - (b) (No change.)

(c) Loan Origination Charge. A loan origination charge will be assessed of 2.25% of the DWSRF loan amount, excluding the amount of the origination charge. The loan origination charge is a one-time non-refundable charge that is due and payable at the time of loan closing. The loan origination charge may be financed as a part of the DWSRF loan.

(d) - (g) (No change.)

§371.24. Disadvantaged Community Program through Loan Subsidies.

(a) (No change.)

(b) Definition of Disadvantaged Community.

(1) - (6) (No change.)

(7) The adjusted median household income is calculated as the [~~1990~~] annual median household income identified in the most recent U.S. Census from the closest applicable census tract multiplied by the current Texas Consumer Price Index divided by the most recent decennial [~~1990~~] Texas Consumer Price Index. The adjusted median income may also be calculated using data from a survey approved by the executive administrator of a statistically acceptable sampling of customers in the service area completed within the last 12 months. The necessary information will be provided by the board to the applicant during the solicitation process.

(8) (No change.)

(c) (No change.)

(d) Additional Project Costs. If the actual cost of a project funded under this section exceeds the estimated cost of the project as listed on the intended use plan, the additional cost will be funded through the [~~Water Supply Account of the~~] Texas Water Development Funds [~~Fund~~] and interest rates for the additional cost will be set according to the provisions of §363.33 of this title (relating to Interest Rates for Loans and Purchase of Board's interest in State Participation Projects).

(e) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 19, 2005.

TRD-200500261
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: March 9, 2005
For further information, please call: (512) 475-2052

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SUBCHAPTER D. BOARD ACTION ON APPLICATION

31 TAC §371.51

The amendments are proposed under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the SRF program.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapter 15, Subchapter J.

§371.51. Formal Action by the Board.

(a) - (b) (No change.)

(c) Closing [~~Commitment~~] date. If the board approves an application for assistance under this chapter, the applicant must close the loan within 24 calendar months after the month in which the board approved the application. [~~Applicants for funds under this chapter must close their loans within 24 months of the date the board commits funds, unless they request of the board and receive an extension of the commitment date.~~]

(d) Extension of closing date. A closing date may be extended if:

(1) the applicant submits a written request to extend the closing date identifying a new closing date and a reasonable basis to extend the closing date; and

(2) the board approves an extended closing date by resolution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 19, 2005.

TRD-200500262
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: March 9, 2005
For further information, please call: (512) 475-2052

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER J. PETROLEUM PRODUCTS DELIVERY FEE

34 TAC §3.151

The Comptroller of Public Accounts proposes an amendment to §3.151, concerning imposition, collection, and bonds or other security of the fee. The change is necessary to reflect current comptroller policy providing that the fee not be assessed on petroleum products withdrawn from a bulk facility and exported from this state or delivered into the fuel supply tanks of vessels or boats, provided that the fuel is not stored prior to export. An additional change is necessary to reflect current comptroller policy providing entities exempt from the fee the option of seeking a refund from the permitted bulk facility from which the petroleum products were withdrawn or seeking a refund directly from the comptroller. A new subsection (k) is added, with the remaining subsections renumbered.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will

be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Water Code, §26.3574.

§3.151. Imposition, Collection, and Bonds or Other Security of the Fee.

(a) The Texas Petroleum Products Delivery Fee is imposed, collected, and paid to the state by operators of bulk facilities. The fee is assessed when petroleum products are withdrawn from the bulk facility and delivered into a cargo tank or barge or imported into this state in a cargo tank or barge for delivery to another location for distribution or sale. The fee is not assessed when the fuel is destined for delivery to another bulk facility, an electrical generating plant, a common carrier railroad for its exclusive use, or is to be exported from the state prior to being placed into intermediate storage tanks.

(b) For the purposes of this section, withdrawals from a bulk facility into a cargo tank or barge are not subject to the fee when the entire withdrawal is delivered into the fuel supply tanks of vessels or boats prior to being placed into intermediate storage tanks.

(c) The fee is collected by the operator of a bulk facility from the person ordering the withdrawal. The fee is computed as follows:

(1) For each delivery into a cargo tank or barge having a capacity of less than 2,500 gallons:

(A) $10 for each delivery made after August 31, 2003, and before September 1, 2005;

(B) $5 for each delivery made after August 31, 2005, and before September 1, 2006;

(C) $2 for each delivery made after August 31, 2006, and before September 1, 2007;

(D) the fee is repealed effective September 1, 2007.

(2) For each delivery into a cargo tank or barge having a capacity of 2,500 gallons or more but less than 5,000 gallons:

(A) $20 for each delivery made after August 31, 2003, and before September 1, 2005;

(B) $10 for each delivery made after August 31, 2005, and before September 1, 2006;

(C) $4 for each delivery made after August 31, 2006, and before September 1, 2007;

(D) the fee is repealed effective September 1, 2007.

(3) For each delivery into a cargo tank or barge having a capacity of 5,000 gallons or more but less than 8,000 gallons:

(A) $30 for each delivery made after August 31, 2003, and before September 1, 2005;

(B) $15 for each delivery made after August 31, 2005, and before September 1, 2006;

(C) $6 for each delivery made after August 31, 2006, and before September 1, 2007;

(D) the fee is repealed effective September 1, 2007.

(4) For each delivery into a cargo tank or barge having a capacity of 8,000 gallons or more but less than 10,000 gallons:

(A) $40 for each delivery made after August 31, 2003, and before September 1, 2005;

(B) $20 for each delivery made after August 31, 2005, and before September 1, 2006;

(C) $8 for each delivery made after August 31, 2006, and before September 1, 2007;

(D) the fee is repealed effective September 1, 2007.

(5) For each increment of 5,000 gallons or any part thereof delivered into a cargo tank or barge having a capacity of 10,000 gallons or more:

(A) $20 for each delivery made after August 31, 2003, and before September 1, 2005;

(B) $10 for each delivery made after August 31, 2005, and before September 1, 2006;

(C) $4 for each delivery made after August 31, 2006, and before September 1, 2007;

(D) the fee is repealed effective September 1, 2007.

(d) In determining the amount of fee due for motor gasoline, other alcohol blended fuels, and aviation gasoline, each net temperature corrected withdrawal of 7,000 gallons or more but less than 10,000 gallons shall be presumed to have been a delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons and the fee shall be collected as provided by subsection (c)(4) of this section.

(e) In determining the amount of fee due on all withdrawals not covered by subsection (d) of this section, it shall be presumed that the capacity of the cargo tank or barge is equal to the total net temperature corrected quantity of product withdrawn.

(f) For the purposes of this section, a bulk facility is a refinery terminal or any other terminal or facility which receives petroleum products by pipeline, rail, or barge, and delivers the products into a cargo tank or barge.

(g) For the purposes of this section, the operator of a bulk facility is the person who first invoices petroleum products withdrawn from the facility. An exchange statement is not considered an invoice.

(h) For the purposes of this section, an electrical generating facility is a plant operated for the primary purpose of generating electricity for sale to consumers.

(i) Persons exempt from the petroleum products delivery fee, including persons operating barges who make withdrawals from a permitted bulk facility for delivery into the fuel supply tanks of vessels or boats prior to intermediate storage, shall request in writing a letter of exemption from the comptroller. The letter of exemption issued by the

comptroller, or a copy, must be furnished to the seller each time purchases exempt from the petroleum products delivery fee are made.

(j) If the person making the sale to the exempt purchaser does not hold a petroleum products delivery fee permit, the purchaser must also furnish to the seller a statement listing the date of purchase, number of gallons purchased per delivery, and destination of the product. For the seller to receive credit for exempt sales, this documentation must be presented to the permitted bulk facility from which the product was purchased.

(k) As an alternative to subsection (j) of this section, an exempt purchaser may elect to seek refund directly from the comptroller. When an exempt purchaser elects to use this option, the purchaser must use this option with the vendor for all petroleum products purchased during the refund claim period for which the fee has been paid. The exempt purchaser must furnish to the comptroller:

(1) a letter declaring that the exempt purchaser did not provide the seller with a comptroller issued petroleum products delivery fee exemption letter and will not seek a refund from the seller or bulk facility from which the petroleum products were withdrawn;

(2) a copy of the comptroller issued petroleum products delivery fee exemption letter;

(3) documentation showing that the petroleum products delivery fee was paid; and

(4) any other information the comptroller deems necessary to validate the refund.

(l) [~~(k)~~] The amount of the petroleum products delivery fee must be listed as a separate item on the invoice or cargo manifest issued by the person holding a permit to collect the fee upon the withdrawal of product from a bulk facility.

(m) [~~(l)~~] Only persons who hold a petroleum products delivery fee permit may charge and collect the fee on the basis of the bracket system established in this section. No other persons selling fuel may list the fee as a separate item on invoices or manifest except:

(1) when required to do so by another governmental agency; or

(2) when an amount is clearly identified as reimbursement. An amount collected as reimbursement may not exceed the amount of fee actually paid by the person issuing the manifest or invoice.

(n) [~~(m)~~] The comptroller may require a bulk facility operator to post a bond or other security to protect the revenues of the state.

(o) [~~(n)~~] When determining the security required of a bulk facility operator, the comptroller will take into consideration the amount of fee that has or is expected to become due from the person, any past history of the person as a distributor or supplier of fuel, and the necessity to protect the state against the failure to pay the fee as it becomes due.

(p) [~~(o)~~] The comptroller may require a bond equal to two times the highest amount of fees that will accrue during a reporting period. The minimum bond is $30,000. The maximum bond is $600,000 unless the comptroller believes there is undue risk of loss of fee revenues, in which event he may require one or more bond or securities in a total amount exceeding $600,000.

(q) [~~(p)~~] If the comptroller determines that a bulk facility operator has for four consecutive years continuously complied with the conditions of the bond or other security on file, the operator is entitled on request to have the comptroller return, refund, or release the bond or security. However, if the comptroller determines that the revenues of the state would be jeopardized by the return, refund, or release of the bond or security, the comptroller may elect not to return, refund, or release the bond or security. The comptroller may reimpose a requirement of a bond or other security if necessary to protect the revenues of the state.

(r) [~~(q)~~] A bond must be a continuing instrument, must constitute a new and separate obligation in the penal sum named in the bond for each calendar year or portion of a year while the bond is in force, and must remain in effect until the surety on the bond is released and discharged.

(s) [~~(r)~~] In lieu of filing a surety bond, an applicant for a permit may substitute the following security:

(1) cash in the form of United States currency in an amount equal to the required bond, to be deposited in the suspense account of the state treasury;

(2) an assignment to the comptroller of a certificate of deposit in any bank or savings and loan association in Texas that is a member of the FDIC in an amount equal to the bond amount required; or

(3) an irrevocable letter of credit to the comptroller from any bank or savings and loan association in Texas that is a member of the FDIC in an amount of credit at least equal to the bond amount required.

(t) [~~(s)~~] If the amount of an existing bond becomes insufficient or a security becomes unsatisfactory or unacceptable, the comptroller may require the filing of a new or of an additional bond or security.

(u) [~~(t)~~] No surety bond or other form of security may be released until it is determined by examination or audit that no fee, penalty, or interest liability exists. The cash or securities shall be released within 60 days after the comptroller determines that no liability exists.

(v) [~~(u)~~] The comptroller may use the cash or certificate of deposit security to satisfy a final determination of delinquent liability or a judgment secured in any action by this state to recover fees, cost, penalties, and interest found to be due this state by a person in whose behalf the cash or certificate security was deposited.

(w) [~~(v)~~] A surety on a bond furnished by a permittee shall be released and discharged from liability to the state accruing on the bond after the expiration of 30 days after the date on which the surety files with the comptroller a written request to be released and discharged. The request does not relieve, release, or discharge the surety from a liability already accrued, or that accrues before the expiration of the 30-day period. Promptly after receipt of the request, the comptroller shall notify the permittee who furnished the bond, and unless the permittee, before the expiration date of the existing security, files with the comptroller a satisfactory new bond or other security, the comptroller shall cancel the permit.

(x) [~~(w)~~] The comptroller shall notify immediately the issuer of a letter of credit of a final determination of the bulk facility operator's delinquent liability or a judgment secured in any action by this state to recover fees, cost, penalties, and interest found to be due this state by a bulk facility operator in whose behalf the letter of credit was issued. A letter of credit accepted as security shall contain a statement that the issuer agrees to respond to the comptroller's notice of liability with amounts sufficient to satisfy the comptroller's delinquency claim against the bulk facility operator.

(y) [~~(x)~~] An examination or audit may be requested to obtain release of the security when the permit holder relinquishes the permit or desires to substitute one form of security for an existing one.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

TRD-200500306
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 475-0387

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SUBCHAPTER L. MOTOR FUEL TAX--PRIOR TO JANUARY 1, 2004

34 TAC §3.182

The Comptroller of Public Accounts proposes an amendment to §3.182, concerning motor fuel transporting documents The change is necessary to reflect the correct reference to the Water Code in subsection (c)(14).

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §153.004 and §153.227

§3.182. Motor Fuel Transporting Documents.

(a) This rule applies only to motor fuel transactions that take place prior to January 1, 2004. Motor fuel transactions that occur on or after January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter S.

(b) Manifest requirements. The transportation of motor fuel as cargo shall be recorded on a cargo manifest or shipping document that is issued at the time the motor fuel is delivered into a cargo tank. The manifest or shipping document shall accompany the cargo until the motor fuel is resold or removed from the cargo tank, and shall be retained for four years for audit purposes.

(c) Information required. The cargo manifest or shipping document shall be issued in not less than duplicate and shall contain the following information:

(1) the type of motor fuel being transported, and if dyed diesel fuel is being transported, a notice that states "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use";

(2) the name and the federal employer identification number or social security number of the carrier. If the federal identification number or social security number of the carrier is not printed on the cargo manifest or shipping document, that information must be in the records of the terminal or bulk plant operator and made available for review when requested;

(3) the quantity of motor fuel in gross gallons;

(4) the temperature and quantity in temperature adjusted gallons when the fuel is loaded at a terminal for export or import or when the sale of gasoline or diesel fuel must comply with §3.190 of this title (relating to Temperature Adjustment Conversion Table);

(5) the percentage of ethanol or methanol contained in the motor fuel;

(6) the types and percentages of cosolvents contained in the motor fuel, if methanol has been added;

(7) the date of loading or movement;

(8) the name and physical address or Terminal Code Number assigned by the United States Internal Revenue Service of the terminal or bulk plant at which the cargo was loaded;

(9) the destination of the cargo;

(10) the name of the seller, consignor, or shipper;

(11) the name, federal employer identification number, permit number if applicable, and physical address of the purchaser or consignee (the federal identification number, permit number, and physical address of the purchaser or consignee must be in the records of the terminal or bulk plant operator and available for review if not printed on the shipping document);

(12) the method of transportation:

(A) if by truck, the license or unit number;

(B) if by barge or boat, the name of the vessel;

(C) if by railway, the rail car number and initial;

(13) the name of the person responsible for payment of the tax, if different from the permitted supplier or distributor. If this information is not printed on the manifest or shipping document, it must be in the records of the terminal operator and made available for review when requested;

(14) the amount of delivery fee assessed under Water Code, §26.3574[~~§27.3574~~]; and

(15) any other information the comptroller deems necessary for the proper administration of Tax Code, Chapter 153.

(d) Waybills or bill of lading. If a carrier transports motor fuel for which a waybill is required under the regulations of the Texas Railroad Commission, or a bill of lading is required under the regulations of the United States Department of Transportation, or if other similar documentation is required by another regulatory agency, these documents may be used in lieu of the manifest or shipping document prescribed in this section, so long as the waybill, bill of lading, or similar document lists the information described in subsection (c) of this section.

(e) Delivery of cargo manifest or shipping document. One copy of the transporting document shall be delivered to the purchaser at the time of fuel delivery, and the seller shall retain one copy. If a

common carrier or contract carrier delivers the fuel, the carrier must also retain one copy.

(1) If the cargo is being loaded at different locations, a notation of the fuel loaded at each location must be made on the cargo manifest, or a separate manifest that covers the fuel or blend material loaded at each location must be issued.

(2) If the cargo is being off-loaded at various locations, then at the time the off-loading is accomplished, a notation of the fuel off-loaded shall be made on the required cargo manifest, or a customer invoice that indicates the location and amount of motor fuel that has been off-loaded at each place shall be prepared. If invoices are used instead of notations on the manifest, the invoices must be attached or cross referenced to the manifest for record purposes. The cargo manifest or a copy of the customer invoice shall be retained with the transporting vehicle until the motor fuel is removed from the cargo tank.

(3) A cargo manifest is not required on motor fuel that an end user purchases on a signed statement and transports in the user's own cargo tank.

(4) If the delivery fee assessed under Water Code, §26.3574, is not shown on the cargo manifest, it must be shown on the invoice that covers the delivery, and be cross referenced to the manifest for record purposes.

(f) Deliveries at different locations. Deliveries to the same purchaser at different locations may be construed to be single deliveries and qualify for temperature adjustment if the total of all deliveries to that customer is 5,000 gallons or more, and if:

(1) the fuel off-loaded at different locations is the same product type (gasoline or diesel fuel);

(2) the delivery is accomplished from the same cargo tank;

(3) proper notations are made on the cargo manifest or customer invoices, or delivery tickets are prepared and kept with the cargo manifest; and

(4) the off-loading occurs within a reasonable time that allows for transit from one location to another.

(g) Separate deliveries. Deliveries from more than one cargo tank are presumed to be separate deliveries. This presumption may be overcome if:

(1) the seller is unable to make the requested delivery in a single cargo tank;

(2) the delivery of all the requested fuel was completed within a reasonable time (usually within 24 hours);

(3) the customer would have been able to accept the entire amount requested at one time; and

(4) the customer has previously requested deliveries of 5,000 or more gallons of the type of requested fuel, or the customer has changed business operations and now requires deliveries of 5,000 or more gallons of the type of requested fuel.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

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Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.286

The Comptroller of Public Accounts proposes an amendment to §3.286, concerning seller's and purchaser's responsibilities. The amendment incorporates recent statutory changes. House Bill 2424, 78th Legislature, Regular Session, 2003, amended Tax Code, §111.046, effective October 1, 2003, to allow the comptroller to establish by rule a minimum age for a person to be eligible for a permit or license to be issued by the comptroller. Subsection (c)(2) of the proposed section is being amended to establish a minimum age of 18 for an individual to obtain a sales and use tax permit unless the comptroller allows an exception. House Bill 109, 78th Legislature, 2003, amended Tax Code, §151.406, effective January 1, 2004, to require retailers to report the amount of sales tax refunded based on customs broker certifications. The proposed section adds subsection (f)(7) requiring retailers to file supplemental reports with their sales and use tax returns showing the total amount of sales tax refunded for exports based on customs broker certifications.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing additional information regarding tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, Chapter 151.

§3.286. Seller's and Purchaser's Responsibilities (Tax Code, §§111.0046, 151.008, 151.024, 151.051, 151.053, 151.054, 151.103, 151.107, 151.202, 151.203, 151.410, 151.703, 151.707).

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Engaged in business--A retailer is engaged in business in Texas if the retailer:

(A) maintains, occupies, or uses, permanently or temporarily, directly or indirectly, or through an agent, by whatever name

called, an office, place of distribution, sales or sample room, warehouse or storage place, or other place of business;

(B) has any representative, agent, salesperson, canvasser, or solicitor who operates in this state under the authority of the seller to sell, deliver, or take orders for any taxable items;

(C) promotes a flea market, trade day, or other event that involves sales of taxable items;

(D) uses independent salespersons in direct sales of taxable items;

(E) derives receipts from a rental or lease of tangible personal property that is located in this state;

(F) allows a franchisee or licensee to operate under its trade name if the franchisee or licensee is required to collect Texas sales or use tax; or

(G) conducts business in this state through employees, agents, or independent contractors.

(2) Place of business of the seller--For tax permit requirement purposes, the term means an established outlet, office, or location that the seller, his agent, or employee operates for the purpose of receipt of orders for taxable items. A warehouse, storage yard, or manufacturing plant is not a "place of business of the seller" for tax permit requirement purposes unless the seller receives three or more orders in a calendar year at the warehouse, storage yard, or manufacturing plant.

(3) Seller--Every retailer, wholesaler, distributor, manufacturer, or any other person who sells, leases, rents, or transfers ownership of taxable items for a consideration. A promoter of a flea market, trade day, or other event that involves the sales of taxable items is a seller and is responsible for the collection and remittance of the sales tax that dealers, salespersons, or individuals collect at such events, unless the participants hold active sales tax permits that the comptroller has issued. A direct sales organization that is engaged in business as defined in paragraph (1)(D) of this subsection is a seller and is responsible for the collection and remittance of the sales tax on all sales of taxable items by the independent salespersons who sell the organization's product. Pawnbrokers, storagemen, mechanics, artisans, or others who sell property to enforce a lien are also sellers. An auctioneer who does not receive payment for the item sold, does not issue a bill of sale or invoice to the purchaser of the item, and who does not issue a check or other remittance to the owner of the item sold by the auctioneer is not considered a seller responsible for the collection of the tax. In this instance, it is the owner's responsibility to collect and remit the tax. Auctioneers should refer to §3.311 of this title (relating to Auctioneers, Brokers, and Factors).

(b) Permits required.

(1) Each seller must apply to the comptroller and obtain a tax permit for each place of business.

(2) Each out-of-state seller who is engaged in business in this state must apply to the comptroller and obtain a tax permit. An out-of-state seller who has been engaged in business in Texas continues to be responsible for collection of Texas use tax on sales made into Texas for 12 months after the seller ceases to be engaged in business in Texas.

(3) Independent salespersons of direct sales organizations are not required to hold sales tax permits to sell taxable items for direct sales organizations. Direct sales organizations hold responsibility to maintain Texas permits and collect Texas tax on all sales of taxable items by their independent salespersons. See subsection (d)(6) of this section for collection and remittance of tax by direct sales organizations.

(4) A person who engages in business in this state as a seller of tangible personal property or taxable services without a tax permit required by Tax Code, Chapter 151, commits a criminal offense. Each day that a person operates a business without a permit is a separate offense. See §3.305 of this title (relating to Criminal Offenses and Penalties).

(c) To obtain a permit.

(1) A person must complete an application that the comptroller furnishes and must return that application to the comptroller, together with bond or other security that may be required by §3.327 of this title (relating to Taxpayer's Bond or Other Security). A separate permit under the same account is issued to the applicant for each place of business. The permit is issued without charge.

(2) Each legal entity (corporation, partnership, sole proprietor, etc.) must apply for its own permit. An individual or sole proprietor must be at least 18 years of age unless the comptroller allows an exception from the age requirement. The permit cannot be transferred from one owner to another. The permit is valid only for the person to whom it was issued and for the transaction of business only at the address that is shown on the permit. If a person operates two or more types of business at the same location, then only one permit is required.

(3) The permit must be conspicuously displayed at the place of business for which it is issued. A permit holder that has traveling salesmen who operate from one central office needs only one permit, which must be displayed at the central office.

(4) All permits of the seller will have the same taxpayer number; however, each business location will have a different outlet number. The outlet numbers assigned may not necessarily correspond to the number of business locations owned by a taxpayer.

(d) Collection and remittance of the tax.

(1) Each seller must collect the tax on each separate retail sale in accordance with the statutory bracket system in [~~the~~]Tax Code, §151.053. Copies of the bracket system should be displayed in each place of business so both the seller and the customers may easily use them. The tax is a debt of the purchaser to the seller until collected. A seller who is a printer should see paragraph (7) of this subsection for an exception to the collection requirement.

(2) The sales tax applies to each total sale, not to each item of each sale. For example, if two items are purchased at the same time and each item is sold for $.07, then the seller must collect the tax on the total sum of $.14. Tax must be reported and remitted to the comptroller as provided by [~~the~~]Tax Code, §151.410. When tax is collected properly under the bracket system, the seller is not required to remit any amount that is collected in excess of the tax due. Conversely, when the tax collected under the bracket system is less than the tax due on the seller's total receipts, the seller is required to remit tax on the total receipts even though the seller did not collect tax from customers.

(3) The amount of the sales tax must be separately stated on the bill, contract, or invoice to the customer or there must be a written statement to the customer that the stated price includes sales or use taxes. Contracts, bills, or invoices that merely state that "all taxes" are included are not specific enough to relieve either party to the transaction of its sales and use tax responsibilities. The total amount that is shown on such documents is presumed to be the taxable item's sales price, without tax included. The seller or customer may overcome the presumption by using the seller's records to show that tax was included

in the sales price. Out-of-state sellers must identify the tax as Texas sales or use tax.

(4) A seller who advertises or holds out to the public that the seller will assume, absorb, or refund any portion of the tax, or that the seller will not add the tax to the sales price of taxable items commits a criminal offense. See §3.305 of this title.

(5) The practice of rounding off the amount of tax that is due on the sale of a taxable item is prohibited. Tax must be added to the sales price according to the statutory bracket system.

(6) Direct sales organizations must collect and remit tax from independent salespersons as follows.

(A) If an independent salesperson purchases a taxable item from a direct sales organization after the customer's order has been taken, then the direct sales organization must collect and remit sales tax on the actual sales price of the taxable item.

(B) If an independent salesperson purchases a taxable item before the customer's order is taken, then the direct sales organization must collect and remit the tax from the salesperson based on the suggested retail sales price of the taxable item.

(C) Taxable items that are sold to an independent salesperson for the salesperson's use are taxed based on the actual price for which the item was sold to the salesperson at the tax rate that was in effect for the salesperson's location.

(7) A printer is a seller of printed materials and is required to collect tax on sales. However, a printer who is engaged in business in Texas is not required to collect tax if:

(A) the printed materials are produced by a web offset or rotogravure printing process;

(B) the printer delivers those materials to a fulfillment house or to the United States Postal Service for distribution to third parties who are located both in Texas and outside of Texas; and

(C) the purchaser issues an exemption certificate that contains the statement that the printed materials are for multistate use and the purchaser agrees to pay to Texas all taxes that are or may become due to the state on the taxable items that are purchased under the exemption certificate. See subsection (f)(4) of this section for additional reporting requirements.

(e) Payment of the tax.

(1) Each seller, or purchaser who owes tax that was not collected by a seller, must remit tax on all receipts from the sales or purchases of taxable items less any applicable deductions. On or before the 20th day of the month following each reporting period, each person who is subject to the tax shall file a consolidated return together with the tax payment for all businesses that operate under the same taxpayer number. Reports and payments that are due on Saturdays, Sundays, or legal holidays may be submitted on the next business day.

(2) The returns must be signed by the person who is required to file the report or by the person's duly authorized agent, but need not be verified by oath.

(3) The returns must be filed on forms that the comptroller prescribes. The fact that the seller or purchaser does not receive the correct forms from the comptroller does not relieve the seller or purchaser of the responsibility to file a return and to pay the required tax.

(4) A seller or a purchaser who owes tax that was not collected by a seller, who remitted $100,000 or more in sales and use tax to the comptroller during the preceding state fiscal year (September 1 through August 31) must file returns and transfer payments electronically as provided by Tax Code, §111.0625 and §111.0626. For further information about electronic filing of returns and payment of tax, see §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

(5) A non-permitted purchaser who owes sales or use tax that was not collected by a seller must remit the tax to the comptroller on or before the 20th of the month following the month in which the taxable event occurs.

(f) Reporting period.

(1) Sellers, and purchasers who owe tax that was not collected by sellers, who have less than $1,500 in state tax per quarter to report may file returns quarterly. The quarterly reporting periods end on March 31, June 30, September 30, and December 31. The returns must be filed on or before the 20th day of the month following the period ending date.

(2) Sellers, and purchasers who owe tax that was not collected by sellers, who have less than $1,000 state tax to report during a calendar year may file yearly returns upon authorization from the comptroller.

(A) Authorization to file returns on a yearly basis is conditioned upon the correct and timely filing of prior returns.

(B) Authorization to file returns on a yearly basis will be denied if a taxpayer's liability exceeded $1,000 in the prior calendar year.

(C) A taxpayer who files on a yearly basis without authorization is liable for applicable penalty and interest on any previously unreported quarter.

(D) Authority to file on a yearly basis is automatically revoked if a taxpayer's state sales and use tax liability is greater than $1,000 during a calendar year. The taxpayer must file a return for that month or quarter, depending on the amount, in which the tax remittance or liability is greater than $1,000. On that report, the taxpayer must report all taxes that are collected and all accrued liability for the year, and must file monthly or quarterly, as appropriate, so long as the yearly tax liability is greater than $1,000.

(E) Once each year, the comptroller reviews all accounts to confirm yearly filing status and to authorize permit holders who meet the filing requirements to file yearly returns.

(F) Yearly filers must report on a calendar year basis. The return and payment are due on or before January 20 of the next calendar year.

(3) Sellers, and purchasers who owe tax that was not collected by sellers, who have $1,500 or more in state tax per quarter to report must file monthly returns except for sellers who prepay the tax.

(4) A printer who is not required to collect tax on the sale of printed materials because the transaction meets the requirements of subsection (d)(7) of this section must file a quarterly special use tax report with the comptroller on or before the last day of the month following the quarter. The special use tax report must contain the name and address of each purchaser with the sales price and date of each sale. The printer is still required to file sales and use tax returns to report and remit taxes that the printer collected from purchasers on transactions that do not meet the requirements of subsection (d)(7) of this section.

(5) Each taxpayer who is required to file a city, county, special purpose district (SPD), or metropolitan transit authority/city transit department (MTA/CTD) sales and use tax return must file the return at the same time that the state sales and use tax return is filed.

(6) State agencies. State agencies that deposit taxes directly with the comptroller's office according to Accounting Policy Statement Number 8 are not required to file a separate tax return. A fully completed deposit request voucher is deemed to be the return filed by these agencies. Paragraphs (1)-(3) of this subsection do not apply to these state agencies. Taxes must be deposited with the comptroller's office within the time period otherwise specified by law for deposit of state funds.

(7) Retailers must report the total amount of sales tax refunded for sale of merchandise exported beyond the territorial limits of the United States and documented by licensed customs broker certifications under Tax Code §151.307(b)(2). Retailers who refund tax on exports based on customs broker certifications must file the supplemental report on a form prescribed by the comptroller. Retailers file the supplemental reports at the same time and for the same reporting period as the retailer's state sales and use tax return.

(g) Filing the return; prepaying the tax; discounts; penalties.

(1) The comptroller makes forms available to all persons who are required to file returns. The failure of the taxpayer to obtain the forms does not relieve that taxpayer from the requirement to file and remit the tax timely. Each taxpayer may claim a discount for timely filing and payment as reimbursement for the expense of collection of the tax. The discount is equal to 0.5% of the amount of tax due. Certain sellers and purchasers are required to file returns and pay tax electronically, as provided in subsection (e)(4) of this section.

(2) The return for each reporting period must reflect the total sales, taxable sales, and taxable purchases for each outlet. The 0.5% discount for timely filing and payment may be claimed on the return for each reporting period and computed on the amount timely reported and paid with that return.

(3) Prepayments may be made by taxpayers who file monthly or quarterly returns. The amount of the prepayment must be a reasonable estimate of the state and local tax liability for the entire reporting period. "Reasonable estimate" means at least 90% of the total amount due or an amount equal to the actual net tax liability due and paid for the same reporting period of the immediately preceding year.

(A) A taxpayer who makes a timely prepayment based upon a reasonable estimate of tax liability may retain an additional discount of 1.25% of the amount due.

(B) The monthly prepayment is due on or before the 15th day of the month for which the prepayment is made

(C) The quarterly prepayment is due on or before the 15th day of the second month of the quarter for which the tax is due.

(D) On or before the 20th day of the month that follows the quarter or month for which a prepayment was made, the taxpayer must file a return showing the actual liability and remit any amount due in excess of the prepayment. If there is an additional amount due, the taxpayer may retain the 0.5% reimbursement provided that both the return and the additional amount due are timely filed. If the prepayment exceeded the actual liability, the taxpayer will be mailed an overpayment notice or refund warrant.

(4) Remittances that are less than a reasonable estimate as required by paragraph (3) of this subsection are not regarded as prepayments. The 1.25% discount will not be allowed. If the taxpayer owes more than $1,500 in a calendar quarter, the taxpayer is regarded as a monthly filer. All monthly reports that are not filed because of the invalid prepayment are subject to late filing penalty and interest.

(5) If a taxpayer does not file a return together with payment on or before the due date, the taxpayer forfeits all discounts and incurs a mandatory 5.0% penalty. After the first 30 days delinquency, an additional mandatory penalty of 5.0% is assessed against the taxpayer, and after the first 60 days delinquency, interest begins to accrue at the prime rate, as published in the *Wall Street Journal* on the first business day of each calendar year, plus 1.0%. For taxes that are due on or before December 31, 1999, interest is assessed at the rate of 12% annually.

(6) Permit holders are required to file sales and use tax returns. A permit holder must file a sales and use tax return even if the permit holder has no sales or tax to report for the reporting period. A person who has failed to file timely reports on two or more previous occasions must pay an additional penalty of $50 for each subsequent report that is not filed timely. The penalty is due regardless of whether the person subsequently files the report or whether no taxes are due for the reporting period.

(h) Records required.

(1) Records must be kept for four years, unless the comptroller authorizes in writing a shorter retention period. Exemption and resale certificates must be kept for four years following the completion of the last sale covered by the certificate. See §3.281 of this title (relating to Records Required; Information Required) and §3.282 of this title (relating to Auditing Taxpayer Records).

(2) The comptroller or an authorized representative has the right to examine, copy, and photograph any records or equipment of any person who is liable for the tax in order to verify the accuracy of any return or to determine the tax liability in the event that no return is filed.

(3) A person who intentionally or knowingly conceals, destroys, makes a false entry in, or fails to make an entry in, records that are required to be made or kept under Tax Code, Chapter 151, commits a criminal offense. See §3.305 of this title.

(i) Resale and exemption certificates.

(1) Any person who sells taxable items in this state must collect sales and use tax on taxable items that are sold unless a valid and properly completed resale certificate, exemption certificate, direct payment exemption certificate, or maquiladora exemption certificate is received from the purchaser. Simply having permit numbers on file without properly completed certificates does not relieve the seller from the responsibility for collecting tax.

(2) A seller may accept a resale certificate only from a purchaser who is in the business of reselling the taxable items within the geographical limits of the United States of America, its territories and possessions, or in the United Mexican States. See §3.285 of this title (relating to Resale Certificate; Sales for Resale). To be valid, the resale certificate must show the 11-digit number from the purchaser's Texas tax permit or the out-of-state registration number of the out- of-state purchaser. A Mexican retailer who claims a resale exemption must show the Federal Taxpayers Registry (RFC) identification number for Mexico on the resale certificate and give a copy of the Mexican Registration Form to the Texas seller.

(3) A seller may accept an exemption certificate in lieu of the tax on sales of items that will be used in an exempt manner or on sales to exempt entities. See §3.287 of this title (relating to Exemption Certificates). There is no exemption number. An exemption certificate does not require a number to be valid.

(4) A purchaser who claims an exemption from the tax must issue to the seller a properly completed resale or exemption

certificate. The seller must act in good faith when accepting the resale or exemption certificate. If a seller has actual knowledge that the exemption claimed is invalid, the seller must collect the tax.

(5) A person who intentionally or knowingly makes, presents, uses, or alters a resale or exemption certificate for the purpose of evading sales or use tax is guilty of a criminal offense. See §3.305 of this title.

(6) Direct payment permit holders are entitled to issue exemption certificates when purchasing all taxable items, other than those purchased for resale. The direct payment exemption certificate must show the purchaser's direct payment permit number. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(7) Maquiladora export permit holders are entitled to issue maquiladora exemption certificates when they purchase tangible personal property, other than that purchased for resale. Maquiladora export permit holders should refer to §3.358 of this title (relating to Maquiladoras).

(8) The seller should obtain a properly executed resale or exemption certificate at the time a transaction occurs. All certificates obtained on or after the date the auditor actually begins work on the audit at the seller's place of business or on the seller's records are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained. The seller has 60 days from the date on which the seller receives written notice from the comptroller of the seller's duty to deliver certificates to the comptroller. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption of three business days for mail delivery by submitting proof from the United States Postal Service or by providing other competent evidence that shows a later delivery date. Any certificates that are delivered to the comptroller during the 60-day period are subject to verification by the comptroller before any deductions are allowed. Certificates that are delivered to the comptroller after the 60-day period will not be accepted and the deduction will not be granted. See §3.285 of this title (relating to Resale Certificate; Sales for Resale), §3.287 of this title (relating to Exemption Certificates), §3.288 of this title (relating to Direct Payment Procedures and Qualifications) and §3.282 of this title (relating to Auditing Taxpayer Records).

(j) Suspension of permit.

(1) If a person fails to comply with any provision of [~~the~~]Tax Code, Title 2, or with the rules issued by the comptroller under those statutes, the comptroller may suspend the person's permit or permits.

(2) Before a seller's permit is suspended, the seller is entitled to a hearing before the comptroller to show cause why the permit or permits should not be suspended. The comptroller shall give the seller at least 20 days notice, which shall be in accordance with the requirements of §1.14 of this title (relating to Notice of Setting).

(3) After a permit has been suspended, a new permit will not be issued to the same seller until the seller has posted sufficient security and satisfied the comptroller that the seller will comply with both the provisions of the law and the comptroller's rules and regulations.

(4) A person who operates a business in this state as a seller of tangible personal property or taxable services after the permit has been suspended commits a criminal offense. Each day that a person operates a business with a suspended permit is a separate offense. See §3.305 of this title.

(k) Refusal to issue permit. The comptroller is required by [~~the~~]Tax Code, §111.0046, to refuse to issue any permit to a person who:

(1) is not permitted or licensed as required by law for a different tax or activity administered by the comptroller; or

(2) is currently delinquent in the payment of any tax or fee collected by the comptroller.

(l) Cancellation of sales tax permits with no reported business activity.

(1) Permit cancellation due to abandonment. Any holder of a sales tax permit who reported no business activity in the previous calendar year is deemed to have abandoned the permit, and the comptroller may cancel the permit. "No Business Activity" means zero total sales, zero taxable sales, and zero taxable purchases.

(2) Re-application. If a permit is cancelled, the person may reapply and obtain a new sales tax permit upon request provided the issuance is not prohibited by subsection (k)(1) or (2) of this section, or by Tax Code, §111.0046.

(m) Direct payment. Yearly and quarterly filing requirements, prepayment procedures and discounts for timely filing do not apply to holders of direct payment permits. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications). Direct payment returns and remittances are due monthly on or before the 20th day of the month following the end of the calendar month for which payment is made.

(n) Liability related to acquisition of a business or assets of a business. Tax Code, §111.020 and §111.024, provides that the comptroller may impose a tax liability on a person who acquires a business or the assets of a business. See §3.7 of this title (relating to Successor Liability: Liability Incurred by Purchase of a Business).

(o) Criminal penalties. Tax Code, Chapter 151, imposes criminal penalties for certain prohibited activities or for failure to comply with certain provisions under the law. See §3.305 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
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34 TAC §3.295

The Comptroller of Public Accounts proposes an amendment to §3.295, concerning natural gas and electricity. The proposed amendment implements legislative changes made by House Bill 1194, 78th Legislature, 2003. New subsection (i) is added to address pipeline safety fees that are not subject to sales and use tax.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will

be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing additional information regarding tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Utilities Code, §121.211.

§3.295. Natural Gas and Electricity.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Electric utility--Any entity owning or operating for compensation in this state equipment or facilities for producing, generating, transmitting, distributing, selling, or furnishing electricity whose rates for the sale of electric power are set by the Public Utilities Commission under the Public Utility Regulatory Act. The term does not include:

(A) a qualifying small power producer or qualifying co-generator, as defined in the Federal Power Act, §3(17)(D) and §3(18)(C), as amended (16 United States Code §796(17)(D) and §796(18)(C)); or

(B) any person not otherwise a public utility that owns or operates in this state equipment or facilities for producing, generating, transmitting, distributing, selling, or furnishing electric energy to an electric utility, if the equipment or facilities are used primarily for the production and generation of electric energy for the person's own consumption.

(2) Fabrication--To make, build, create, produce, or assemble components of tangible personal property, or to make tangible personal property work in a new or different manner.

(3) Manufacturing--Every operation commencing with the first stage of production of tangible personal property and ending with the completion of tangible personal property. The first production stage means the first act of production and it does not include acts in preparation for production. For example, a manufacturer gathering, arranging, or sorting raw material or inventory is preparing for production. When production is completed, maintaining the life of tangible personal property or preventing its deterioration is not a part of the manufacturing process. Tangible personal property is complete when it has the physical properties, including packaging, if any, that it has when transferred by the manufacturer to another. Also see §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

(4) Remodeling--To make tangible personal property belonging to another over again without causing a loss of its identity, or without causing the property to work in a new or different manner.

(5) Processing--The physical application of the materials and labor necessary to modify or to change the characteristics of tangible personal property. The property being processed may belong either to the processor or the customer, the only tests being whether the property is processed and whether it will ultimately be sold. Direct use of natural gas or electricity in processing will be referred to as exempt use. Processing does not include remodeling or any action taken to prolong the life of tangible personal property or to prevent a deterioration of the tangible personal property being held for sale. The repair of tangible personal property belonging to another by restoring it to its original condition is not considered processing of that property. The mere packing, unpacking, or shelving of a product to be sold will not be considered to be processing of that product.

(6) Residential use--Use in a family dwelling or in a multifamily apartment complex or housing complex or nursing home or in a building or portion of a building occupied as a home or residence when the use is by the owner of the dwelling, apartment, complex, home, or building or part of the building occupied. Residential use also includes use in a dwelling, apartment, complex, house, or building or part of a building occupied as a home or residence when the use is by a tenant who occupies the dwelling, apartment, complex, house, or building or part of a building under a contract for an express initial term of more than 29 consecutive days. Absent a contract, only the period exceeding 29 consecutive days will be considered residential use, when supported by valid documentation (i.e., receipts, canceled checks, etc.). For purposes of the exemption for residential use of natural gas and electricity, nursing homes qualify for exemption only for periods beginning after December 31, 1987.

(b) Sales tax applicable. The furnishing of natural gas or electricity is a sale of tangible personal property. All the provisions in the Tax Code, Chapter 151, applying to the sale of tangible personal property, apply to the sale of natural gas or electricity.

(c) Gas and electricity are exempted from the taxes imposed by this chapter when sold for:

(1) residential use;

(2) use in agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation;

(3) direct or indirect use or consumption, including electricity lost in the lines, by an electric utility engaged in the purchase of electricity for resale;

(4) direct use in:

(A) powering equipment that qualifies for exemption under Tax Code, §151.318, (including equipment that is permanently affixed to or incorporated into realty) to process tangible personal property for sale as tangible personal property, other than preparation of or the storage of food for immediate consumption;

(B) lighting, cooling and heating in the manufacturing area during the actual manufacturing or processing of tangible personal property for sale as tangible personal property, other than preparation or storage of food for immediate consumption;

(C) exploring for, producing, or transporting a material extracted from the earth;

(D) electrical processes, such as electroplating, electrolysis, and cathodic protection;

(E) the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property; or

(F) providing, under contract with or on behalf of the United States government or foreign governments, defense or national security-related electronics, classified intelligence data processing and handling systems, or defense-related platform modifications or upgrades;

(G) the repair, maintenance, or restoration of rolling stock.

(d) Use of gas or electricity in an exempt manner by an independent contractor engaged by the purchaser of the gas or electricity to perform one or more of the activities described in subsection (c)(4) of this section is considered use by the purchaser of the gas or electricity.

(e) Predominant use.

(1) Natural gas or electricity used during a regular monthly billing period for both exempt and taxable purposes under a single meter is totally exempt or taxable based upon the predominant use of the natural gas or electricity measured by that meter. A person who performs a processing, manufacturing, or other exempt function continually must establish predominant use on 12 consecutive months of use.

(2) If, in the regular course of business, a person performs a processing, manufacturing, or other exempt function only part of the year and a nonprocessing, nonmanufacturing, or other taxable function for the remainder of the year, the predominant use may be established for that period of time the processing, manufacturing, or other exempt function occurs based on the predominant use during that period.

(3) When determining the predominant use of natural gas or electricity, utilities used to operate machinery exempt under subsection (c)(4)(A) of this section and for lighting, cooling, and heating in the manufacturing area during actual manufacturing or processing of tangible personal property for sale are exempt. Gas and electricity used to operate lighting, cooling, and heating in manufacturing support areas are taxable. Manufacturing support areas include, but are not limited to, storage, engineering, office and accounting areas, research and development, and break, eating, and restroom facilities. Utilities used in an area open to the public for the purpose of marketing a product ready for sale are taxable. Utilities used to operate other nonproduction machinery or equipment are taxable.

(f) Determining predominant use: utility studies.

(1) Persons claiming a sales tax exemption because the predominant use of natural gas and electricity through a single meter is for processing, manufacturing, fabricating, or other nontaxable[~~taxable~~] use must have performed a utility study to establish this predominant exempt use. The study must list all uses of the utility, both exempt and taxable, the times of usage, the energy used, and whether the use was taxable or exempt. Twelve consecutive months of utility usage must be a part of the study. The kilowatt rating or BTU rating, duty factor, where needed for cycling equipment, and electrical or natural gas computations must be certified by a registered engineer or a person with an engineering degree from an accredited engineering college. The owner of the business must certify that all items using natural gas or electricity (depending on which utility is covered by the study) are listed and that the hours of use for each item are correct. The certification of both the engineer and the owner must appear on the face of the study. If the owner of the business appoints an agent to act on the owner's behalf, the power of attorney must clearly state that the agent is attempting to qualify the principal for a sales tax exemption, and if a refund of sales tax is involved, the power of attorney must also state that a sales tax refund will be made by the state through the utility company. A person in business less than 12 consecutive months may still apply for a sales tax exemption if a registered engineer or a person with an engineering degree performs a study based upon projected uses which shows the predominant use as exempt. A person claiming an exemption based upon estimated use must be able to support the claimed exemption with a study of actual use after 12 consecutive months of operation if so requested by the comptroller.

(2) The study must be completed and on file at the location of the person claiming the exemption at the time an exemption certificate is submitted to the utility company. Without the study, the claim for exemption will be presumed to be invalid. Persons obtaining a sales tax refund without a valid study will be assessed tax, penalty, and interest by the comptroller on the full amount of the refund, if the exemption is not proved. If the exemption certificate is fully completed with all information required by this section and bears an original seal of a registered engineer or is attached to a signed statement with an original signature from the owner of the business and a person with an engineering degree from an accredited engineering college, as required by paragraph (1) of this subsection, the utility company is not required to make any additional inquiry before honoring the exemption request.

(3) The comptroller may request a copy of the study for review, either before or after the sales tax exemption is granted. Neither the comptroller by reviewing a study nor the utility company by accepting an exemption certificate is confirming the study's accuracy. Tax, penalty, and interest will be assessed on the business owner if the study is proven to be incomplete or inaccurate to the extent that the predominant use of the natural gas or electricity is taxable.

(4) If a sales tax refund is being claimed retroactively, the study must take into account any changes in equipment or other items using utilities, any changes in business activities, and any changes in square footage being served by the meter.

(5) This subsection does not apply to persons whose use of natural gas or electricity is for processing, manufacturing, or other exempt function if an industry-wide study for that particular industry reflects that the natural gas or electricity used would always qualify as exempt use. The industry-wide study must be submitted to the comptroller's office for review and approval. A subsequent study may be required, in the future, if factors relative to the original study change.

(g) Exemption certificates.

(1) Exempt users must issue exemption certificates to the utility company to claim a sales tax exemption or to obtain a refund of sales tax. The exemption certificate must be specific as to the reason for the claimed exemption. For example, if a person is claiming that the predominant use of the utility is for processing, the reason for the exemption must state, "A valid and complete study has been performed which shows that (insert the actual exempt percentage) of the natural gas or electricity is for processing tangible personal property for sale in the regular course of business."

(2) The exemption is valid only as long as the person continues to use natural gas and electricity in a manner which is for predominantly exempt purposes. At the time the uses of the utilities change so that the predominant use is taxable, it is the person's responsibility to immediately notify the utility company in writing that the exemption is no longer valid.

(3) Persons whose use of natural gas or electricity is solely in family dwellings will not be required to furnish exemption certificates.

(4) A person whose use of natural gas and electricity is in multifamily apartment complexes, housing complexes, nursing homes, or other residential buildings may be required to issue an exemption certificate if one is necessary for the utility company to distinguish exempt residential use from taxable use.

(h) Transportation of a material extracted from the earth.

(1) Sales or use tax is not due on natural gas or electricity used to transport a material or its components extracted from the earth. Examples of materials or components extracted from the earth would be oil, natural gas, coal or coal slurry, crushed stone, sand and gravel, and water.

(2) Sales or use tax is due on natural gas or electricity used to transport a product which was manufactured from a material extracted from the earth. Products which were manufactured from a material extracted from the earth include substances which do not exist in nature or are not components of crude oil, natural gas, coal, or other minerals extracted from the earth.

(3) A material will not be considered to be manufactured when an additive is combined with a material for ancillary reasons, for example, odorant added to natural gas.

(i) Pipeline safety fees. Sales or use tax is not due on any surcharge for pipeline safety fees added to the existing rates of each investor-owned and municipally owned natural gas distribution company and each natural gas master meter operator pursuant to Texas Utilities Code, §121.211.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
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34 TAC §3.303

The Comptroller of Public Accounts proposes an amendment to §3.303, concerning transportation and delivery charges. The proposed amendment clarifies that separately stated postage charges will not be subject to sales and use tax when incurred by the seller at the request of a client to distribute both taxable tangible personal property and taxable services to third party recipients as designated by the client. Subsection (d) is amended accordingly.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing additional information regarding tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §151.005 and §151.007.

§3.303. Transportation and Delivery Charges.

(a) Transportation charges for taxable items. The sales tax applies to all transportation or delivery charges to a customer when a taxable item is sold, leased or rented on or after October 1, 1987, and delivery charges are billed by the seller or lessor to the purchaser or lessee. The charges for transportation or delivery, both before and after the sale, are taxable even if stated separately from the sales price of a taxable item. These charges are considered to be services or expenses connected to the sale.

(b) Charges by third party carriers. A third party carrier (separate legal entity) will not be responsible for collecting or remitting tax as long as the third party carrier only provides transportation and does not sell the taxable item being delivered.

(c) Common terminology. The term "transportation and delivery charges' includes all other terms used by common or contract carries to describe transportation, such as freight, shipping, delivery, or postage.

(d) Postage charges. Separately stated charges for postage are not taxable when billed by the seller to a client if the cost of the postage was incurred by the seller at the request of the client to distribute taxable items[~~tangible personal property~~] to third party recipients designated by the seller's client.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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34 TAC §3.323

The Comptroller of Public Accounts proposes an amendment to §3.323, concerning imports and exports. This section is being amended to implement House Bill 109, 78th Regular Session of the Texas Legislature. Effective January 1, 2004, the legislation amends Tax Code §151.157, §151.158, §151.307, and adds §151.1575 regarding customs broker export certifications. Subsection (c)(2) of the proposed section contains information about this change and references §3.360, concerning customs brokers, which is being amended to reflect the new customs broker certification requirements. New subsection (g) explains the reporting requirements for retailers who refund sales tax based on licensed customs broker certifications. Other amendments to the language of the proposed section are for the purposes of clarity.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will

be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing additional information regarding tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, Chapter 151.

§3.323. Imports and Exports (Tax Code §151.157, 151.1575, 151.158, 151.307, 151.3071, 151.330).

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Air forwarder--A licensed International Air Transportation Association freight forwarder.

(2) Consignee--The person named in a bill of lading to whom or to whose order the bill promises delivery.

(3) Consignor--The person named in a bill of lading as the person from whom the goods have been received for shipment.

(4) Licensed and certificated carrier--A person authorized by the appropriate United States agency or by the appropriate state agency within the United States to operate an aircraft, vessel, train, motor vehicle, or pipeline as a common or contract carrier. Certificates of inspection or airworthiness certificates are not the appropriate documents for authorizing a person to operate as a common or contract carrier. These documents relate to the carrier device itself rather than a person's right to operate a carrier business.

(5) Licensed customs broker--A person who is licensed by the United States Customs Service to act as a custom house broker and who holds a Texas Customs Broker's License issued by the comptroller as provided in §3.360 of this title (relating to Customs Brokers).

(6) Ocean forwarder--A licensed Federal Maritime Commission freight forwarder.

(b) United States Constitution. On the basis of the import and export clause of the United States Constitution, Article 1, §10, clause 2, tangible personal property imported into or exported from Texas is exempt from taxation by the Tax Code, §151.307 and §151.330, so long as the property retains its character as an import or export.

(c) Exports.

(1) When an exemption is claimed because tangible personal property is exported beyond the territorial limits of the United States, proof of export may be shown only by:

(A) a copy of a bill of lading issued by a licensed and certificated carrier of persons or property that shows the seller as consignor, the buyer as consignee, and a delivery point outside the territorial limits of the United States;

(B) documentation that is valid under §3.360 of this title (relating to Customs Brokers) provided by a licensed customs broker certifying that the property will be exported[~~delivery was made~~] to a point outside the territorial limits of the United States;

(C) formal entry documents from the country of destination showing that the property was imported into a country other than the United States. For the country of Mexico, the formal entry document would be the pedimento de importaciones document with a computerized, certified number issued by Mexican customs officials, or an alternative type of formal entry document also used by Mexican customs officials, such as the boleta;

(D) a copy of the original airway, ocean, or railroad bill of lading issued by a licensed and certificated carrier that describes the property being exported and a copy of the air forwarder's, ocean forwarder's, or rail freight forwarder's receipt if an air, ocean, or rail freight forwarder takes possession of the property in Texas; or

(E) a maquiladora exemption certificate issued by an organization of the type defined in §3.358 of this title (relating to Maquiladoras). The maquiladora must also provide a copy of its maquiladora export permit issued by the comptroller.

(2) The retailer is responsible for obtaining proof of exportation. Only one type of proof relating to a particular piece of property is necessary. For example, a furniture store sells a table and collects sales tax. The purchaser returns to the store a week later with a valid pedimento de importaciones showing that the table was imported into Mexico. The retailer may accept the pedimento, alone, as proof of export and refund the tax. It is not necessary for the retailer to also obtain an export certification form issued by a licensed customs broker. Except as provided in §3.358 of this title (relating to Maquiladoras), exemption certificates, affidavits, or statements from the purchaser that the property will be or has been exported are not sufficient to exempt the sale as an export. The [~~Texas proof of export form, which differs from~~]the certification form provided by a licensed Texas customs broker as provided in §3.360 of this title (relating to Customs Brokers), is[~~no longer~~] acceptable as proof of export. A passport number taken by a seller from a passport issued by a foreign country is not acceptable as proof of export. For information concerning resale certificates given by Mexican retailers, see §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(3) Storing property in Texas by the owner prior to exportation is a use of that property in Texas. Property stored or otherwise used or consumed in Texas by the owner loses its exemption as an export. For example, clothing or jewelry actually worn by the purchaser in Texas is used in Texas; automotive parts (not including electronic audio equipment) installed on the purchaser's motor vehicle in Texas are used in Texas if the vehicle is subsequently driven in Texas; and food ready for immediate consumption that is purchased in Texas is presumed to be used in Texas. By law, electronic audio equipment retains the exemption even if installed in a motor vehicle that is driven in Texas prior to export. Sufficient time will be allowed to arrange for shipping. Property in Texas longer than 30 days from date of purchase will be presumed to have been stored. Any use of the property in Texas by the owner prior to export also causes the loss of the export exemption. Property in the hands of a freight forwarder is not covered by this provision.

(4) The sale of property to military personnel is taxable unless proof of export is maintained as outlined in paragraph (1) of this subsection.

(5) If a seller delivers property to a purchaser in Texas, the seller must collect tax at the time of sale unless the sale is exempt for a reason other than export and the seller accepts a properly completed

resale or exemption certificate. Tax may not be refunded until the property has actually been exported from the territorial limits of the United States and the seller has received valid proof of export as described in this subsection. There is a rebuttable presumption that an export certification form issued by a licensed customs broker who complies with §3.360 of this title (relating to Customs Brokers) is valid. Tax not collected will be assessed against the seller. This paragraph does not apply when proof of export is provided to the seller at the time of sale by a maquiladora according to the terms of paragraph (1)(E) of this subsection.

(d) Imports. Property imported into Texas from another country is exempt from Texas use tax as long as the property retains its character as an import. When transit ceases in Texas, the import becomes subject to the Texas use tax.

(e) Refunds.

(1) A retailer who collects sales tax on tangible personal property that qualifies for exemption under subsection (b) of this section may refund the tax to the original purchaser or the original purchaser's assignee upon receipt of export documentation as required by subsection (c) of this section.

(2) A retailer who receives documentation that is valid under subsection (c)(1)(B) of this section, must report the total amount of sales tax refunded as provided in subsection (g) of this section, may not refund the tax paid under this chapter on that purchase before:

(A) the 24th hour after the hour stated as the time of export on the documentation, if the retailer is located in a county that borders the United Mexican States; or

(B) the seventh day after the day stated as the date of export on the documentation, if the retailer is located in a county that does not border the United Mexican States.

(3) The refund may be made by certified check, company check, money order, credit memo, or cash. If the refund is made in cash, the retailer must receive at the time the refund is made a receipt showing a description of the property purchased, the amount and date of the refund, and the name, address, and signature of the purchaser and, if applicable, the purchaser's assignee. A retailer who issues a tax refund to the purchaser's assignee must also receive a copy of the purchaser's written assignment of the right to a refund. A retailer who makes a refund before the time prescribed by subsection (e)(2)(A) or (B) of this section or makes a refund that is undocumented or improperly documented is liable for the tax refunded plus interest.

(4) A copy of the certified check, company check, money order, credit memo, or signed cash receipt and a copy of the written assignment of the purchaser's right to a refund, if applicable, must be attached to the original export documents and maintained in the seller's files.

(5) In an audit, the auditor must be able to tie the export documents to the original taxable transaction. The seller must retain the original invoice of the sale. Cash register receipts and other records of the original taxable transaction that do not include a detailed, specific description of the items purchased are not sufficient to tie the export documents to the original taxable transaction. Refunds made pursuant to undocumented or improperly documented export exemptions will be assessed against the seller.

(f) Records. Please refer to §3.281 of this title (relating to Records Required; Information Required), §3.282 of this title (relating to Auditing Taxpayer Records), and §3.360 of this title (relating to Customs Brokers).

(g) Reports. Retailers are required to report the total amount of sales tax refunded for items exported beyond the territorial limits of the United States based on licensed customs broker certifications on a supplemental sales tax report prescribed by the comptroller at the same time and for the same reporting period as the retailer's state sales and use tax return.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
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34 TAC §3.325

The Comptroller of Public Accounts proposes an amendment to §3.325, concerning refunds, interest, and payments under protest. The proposed amendment readopts, as subsection (c)(3), a provision that was inadvertently deleted from the most recent version of this rule. Paragraph (c)(2)(B) is clarified, a new subsection (c)(3) relating to the statute of limitations for refund claims filed pursuant to a deficiency determination is added to implement longstanding agency policy, and the remaining subsections are renumbered accordingly.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing additional information regarding tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §111.104(d).

§3.325. Refunds, Interest, and Payments Under Protest (Tax Code §111.104(d)).

(a) A person who has paid tax in error to the state or to a permitted seller may request a refund of tax paid in error.

(1) A person who does not have a sales and use tax permit and who has paid tax in error to a permitted seller may request a refund

from only the permitted seller to whom the tax was paid. The permitted seller who refunds tax to a purchaser may claim a refund with the comptroller as provided by subsection (b) of this section.

(2) A sales and use tax permit holder who has paid tax in error directly to the comptroller may request from the comptroller a refund of the tax paid in error.

(3) A sales and use tax permit holder who has paid tax in error to another permitted seller may request from the comptroller or the seller a refund of tax paid in error.

(4) A person who requests a refund from the comptroller must:

(A) submit a claim made in writing and must state fully and in detail the specific grounds upon which the claim is based;

(B) indicate the period for which the claimed overpayment was made;

(C) submit the claim within the applicable limitations period as provided subsection (c) of this section; and

(D) submit supporting documentation required by the comptroller.

(b) The following procedures must be used to request a refund from the comptroller.

(1) Seller who requests a refund from the comptroller.

(A) Before a seller refunds to a purchaser tax collected in error, the seller must obtain from the purchaser a properly completed exemption or resale certificate that meets all the requirements of §3.285 of this title (relating to Resale Certificate; Sales for Resale[~~Sales for Resale; Resale Certificate~~]) and §3.287 of this title (relating to Exemption Certificates). The seller must retain the certificate to document the basis for the refund.

(B) After the seller has refunded or, with the purchaser's written consent, credited the tax to the account of the purchaser, the seller may then seek reimbursement from the state in accordance with the procedures that are outlined in subsection (a) of this section or take a credit on the seller's next return in the amount refunded or credited to the account of the purchaser.

(2) A permitted purchaser who requests a refund from the comptroller.

(A) A permitted purchaser who requests a refund from the comptroller must submit to the comptroller a written request that states the basis for the refund and includes the following information:

(i) the seller's name, address, and either the sales tax permit number or information that will enable the comptroller to identify the seller's sales tax permit number;

(ii) the invoice number, if applicable;

(iii) the date of purchase;

(iv) a description of the item purchased;

(v) the specific basis for the refund;

(vi) information that identifies the local taxing authorities for which tax was paid; and

(vii) a statement or reasonable estimate of the amount of the tax refund requested.

(B) The comptroller may require a person to submit additional information to verify the refund claim. The person must show to the satisfaction of the comptroller that the refund is due and make available to the comptroller any documentation that the comptroller requires to process the refund.

(C) A permitted purchaser may amend the return for the period in which the overpayment was made or file a refund claim with the comptroller for sales tax paid in error to a seller. The refund claim must identify the period in which the tax was originally paid. The purchaser must retain, for the period required in Tax Code, Chapter 111, all documentation that is necessary to support the credit.

(c) A claim for refund must be made within the limitations periods.

(1) A claim for refund must be made within four years from the date on which the tax was due and payable as provided by Tax Code, §151.401[~~§151.401, Tax Code~~].

(2) A claim for refund for tax paid pursuant to a deficiency determination must be made by the later of:

(A) four years from the date on which the tax was due and payable; or

(B) six months after the date on which the deficiency determination for the periods becomes final, and is subject to the restriction imposed by subsection (c)(3) of this section.

(3) A refund claim filed within six months after the date on which a deficiency determination becomes final is within the limitations period for all items included in the deficiency determination. A refund claim for all other items is subject to the limitations period in subsection (c)(1) of this section.

(4) [~~(3)~~] If the comptroller and a taxpayer have agreed in writing to extend the limitations period, then a claim for refund must be made before the expiration of the extended period in the agreement. An extension of the statute of limitations applies only to the periods that are specified in the agreement. An expired agreement to extend the statue of limitations has no effect and the statue of limitations for subsequent assessments and refund requests is determined as if no extension had been authorized. For the limitations period for assessments, see §3.339 (relating to Statute of Limitations).

(5) [~~(4)~~] A redetermination or refund proceeding does not toll the statute of limitations, except for the issues contested.

(6) [~~(5)~~] Failure to file a claim within the limitations prescribed by this section constitutes a waiver of any demand against the state on account of the overpayment.

(d) Interest.

(1) Except as provided by paragraphs (2) and (3) of this subsection, in a comptroller's final decision on a claim for refund or in an audit, interest accrues at the rate that is set in Tax Code, §111.060, on the amount that is found to be erroneously paid:

(A) beginning on the later of 60 days after the date of payment or the due date of the tax report; and

(B) ending on, as determined by the comptroller, either:

(i) the date of allowance of credit that results from a final decision that the comptroller has issued, or from an audit; or

(ii) a date that is not more than 10 days before the date of the refund warrant.

(2) The interest rate for a refund that is granted for a period for which a report is due after December 31, 1999, is the rate set in Tax Code, §111.060. A refund for a period for which a report is due before January 1, 2000, does not accrue interest.

(3) Credits taken by a taxpayer on the taxpayer's return do not accrue interest.

(4) No taxes, penalties, or interest will be refunded to a person who has collected the taxes from another person until all taxes are first refunded to the party from whom they were collected.

(e) Denial of refund.

(1) If the comptroller determines that the claim for refund cannot be granted either partially or fully, then the comptroller will notify the claimant of the denial. Claimant may request a refund hearing within 30 days of the denial.

(2) A person may not refile a refund claim for the same transaction or item, tax type, period, and ground or reason that was previously denied by the comptroller.

(f) Payments under protest. A person who intends to file suit under Tax Code, Chapter 112, Subchapter B, must submit to the comptroller a letter of protest with the payment of the tax that is the subject of the protest. See subsection (e) of §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers). The letter of protest must state fully and in detail every reason that the taxpayer contends that the assessment is unlawful or unauthorized, and must accompany the payment. If the payment and letter of protest do not accompany one another, the payment will not be deemed to have been made under protest. For the taxpayer's convenience, the comptroller will advise the taxpayer of the amount of payment under protest that the comptroller has received and the date of the payment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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34 TAC §3.365

The Comptroller of Public Accounts proposes an amendment to §3.365, concerning sales of clothing and footwear during a three-day period in August. The proposed amendment implements the repeal of the opt out provision for local taxing authorities made by House Bill 2425, 78th Legislature, 2003. Subsection (q) is deleted accordingly. Subsections (f)(1), (n)(1), and (n)(2) are amended for clarity.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing additional information regarding tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §151.326.

§3.365. Sales of Clothing and Footwear During a Three-day Period in August.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Clothing or footwear - An article of apparel that the article manufacturer designs for wear on or about the human body. For the purposes of this section, the term does not include accessories, such as jewelry, handbags, purses, briefcases, luggage, wallets, watches, and similar items that are carried on or about the human body, without regard to whether the item is worn on the body in a manner that is characteristic of clothing.

(b) Exempt sales.

(1) Sales or use tax is not due on the sale of an article of clothing or footwear if:

(A) the sales price of the article is less than $100; and

(B) the sale takes place during the period that begins at 12:01 a.m. on the first Friday in August and ends at 12:00 a.m. (midnight) of the following Sunday.

(2) The exemption applies to each article of clothing or footwear that sells for less than $100, regardless of how many items are sold on the same invoice to a customer. For example, if a customer purchases two shirts for $80 each, then both items qualify for the exemption, even though the customer's total purchase price ($160) exceeds $99.99.

(3) The exemption does not apply to the first $99.99 of an article of clothing or footwear that sells for more than $99.99. For example, if a customer purchases a pair of pants that costs $110, then sales tax is due on the entire $110.

(c) Taxable sales. This exemption does not apply to:

(1) any special clothing or footwear that the manufacturer primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which the manufacturer designed the article. For example, golf cleats and football pads are primarily designed for athletic activity or protective use and are not normally worn except when used for those purposes; therefore, they do not qualify for the exemption. However, tennis shoes, jogging suits, and swimsuits are commonly worn for purposes other than athletic activity and thus qualify for the exemption;

(2) accessories, such as jewelry, handbags, purses, briefcases, luggage, umbrellas, wallets, watches, and similar items that are carried on or about the human body, without regard to whether the item is worn on the body in a manner that is characteristic of clothing;

(3) the rental of clothing or footwear. For example, this exemption does not apply to the rental of formal wear, costumes, uniforms, diapers, or bowling shoes;

(4) taxable services that are performed on the clothing or footwear, such as repair, remodeling, or maintenance services, and

cleaning or laundry services. For example, sales tax is due on alterations to clothing, even though the alterations may be sold or invoiced, and the customer pays such invoice, at the same time as the clothing is being altered. If a customer purchases a pair of pants for $90 and pays $15 to have the pants cuffed, then the $90 charge for the pants is exempt, but tax is due on the $15 alterations charge; and

(5) purchases of items that are used to make or repair clothing or footwear, including fabric, thread, yarn, buttons, snaps, hooks, and zippers.

(d) Articles normally sold as a unit. Articles that are normally sold as a unit must continue to be sold in that manner; they cannot be priced separately and sold as individual items in order to obtain the exemption. For example, if a pair of shoes sells for $150, then the pair cannot be split in order to sell each shoe for $75 to qualify for the exemption. If a suit is normally priced at $225 on a single price tag, the suit cannot be split into separate articles so that any of the components may be sold for less than $100 in order to qualify for the exemption. However, components that are normally priced as separate articles may continue to be sold as separate articles and qualify for the exemption if the price of an article is less than $100.

(e) Sales of sets containing both exempt and taxable items.

(1) When exempt clothing or footwear is sold together with taxable merchandise as a set or single unit, the full price is subject to sales tax unless the price of the exempt clothing or footwear is separately stated. For example, if a boxed gift set that consists of a French-cuff dress shirt, cufflinks, and a tie tack is sold for a single price of $95, the full price of the boxed gift set is taxable because the cufflinks and tie tack are taxable and the sales price of the shirt is not separately stated.

(2) When exempt clothing is sold in a set that also contains taxable merchandise as a free gift and no additional charge is made for the gift, the exempt clothing may qualify for this exemption. For example, a boxed set may contain a tie and a free tie tack. If the price of the set is the same as the price of the tie sold separately, the item that is being sold is the tie, which is exempt from tax if the tie is sold for less than $100 during the exemption period. Note: When a retailer gives an item away free of charge, the retailer owes sales or use tax on the purchase price that the retailer paid for the item.

(f) Discounts and coupons.

(1) A retailer may offer discounts to reduce the sales price of an item. If the discount reduces the sales price of an item to $99.99 or less, the item may qualify for the exemption. For example, a customer buys a $150 dress and a $100 blouse from a retailer who offers a 10% discount. After application of the 10% discount, the final sales price of the dress is $135, and the blouse is $90. The dress is taxable (its price is over $99.99), and the blouse is exempt (its price is less than $100.00[~~$99.99~~]).

(2) When retailers accept coupons as a part of the sales price of any taxable item, the value of the coupon is excludable from the tax as a cash discount, regardless of whether the retailer is reimbursed for the amount that the coupon represents. Therefore, a coupon can be used to reduce the sales price of an item to $99.99 or less in order to qualify for the exemption. For example, if a customer purchases a pair of shoes priced at $110 with a coupon worth $20, the final sales price of the shoes is $90, and the shoes qualify for the exemption.

(g) Buy one, get one free or for a reduced price. The total price of items that are advertised as "buy one, get one free," or "buy one, get one for a reduced price," cannot be averaged in order for both items to qualify for the exemption. The following examples illustrate how such sales should be handled.

(1) A retailer advertises pants as "buy one, get one free." The first pair of pants is priced at $120; the second pair of pants is free. Tax is due on $120. Having advertised that the second pair is free, the store cannot register the charge for each pair of pants at $60 in order for the items to qualify for the exemption. However, if the retailer advertises and sells the pants for 50% off, and sells each pair of $120 pants for $60, each pair of pants qualifies for the exemption. Note: When a retailer gives an item away free of charge, the retailer owes sales or use tax on the purchase price that the retailer paid for the item.

(2) A retailer advertises shoes as "buy one pair at the regular price, get a second pair for half price." The first pair of shoes is sold for $100; the second pair is sold for $50 (half price). Tax is due on the $100 shoes, but not on the $50 shoes. Having advertised that the second pair is half price, the store cannot ring up each pair of shoes for $75 in order for the items to qualify for the exemption. However, if the retailer advertises the shoes for 25% off, and thereby sells each pair of $100 shoes for $75, then each pair of shoes qualifies for the exemption.

(h) Rebates. Rebates occur after the sale and do not affect the sales price of an item purchased. For example, a customer purchases a sweater for $110 and receives a $12 rebate from the manufacturer. The retailer must collect tax on the $110 sales price of the sweater.

(i) Layaway sales. A layaway sale is a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the merchandise. An order is accepted for layaway by the retailer when the retailer removes the goods from normal inventory or clearly identifies the items as sold to the customer. A sale of eligible clothing under a layaway sale qualifies for exemption when either:

(1) final payment on a layaway order is made by, and the merchandise is given to, the customer during the exemption period; or

(2) the customer selects the item and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period.

(j) Rain checks. Eligible items that customers purchase during the exemption period with use of a rain check will qualify for the exemption regardless of when the rain check was issued. However, issuance of a rain check during the exemption period will not qualify an eligible item for the exemption if the item is actually purchased after the exemption period.

(k) Exchanges.

(1) If a customer purchases an item of eligible clothing or footwear during the exemption period, but later exchanges the item for an item of a different size, different color, or other feature, no additional tax is due even if the exchange is made after the exemption period.

(2) If a customer purchases an item of eligible clothing or footwear during the exemption period, but after the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item, the appropriate sales tax is due on the sale of the newly purchased item.

(3) If a customer purchases an item of eligible clothing or footwear before the exemption period, but during the exemption period the customer returns the item and receives credit on the purchase of a different item of eligible clothing or footwear, no sales tax is due on the sale of the new item if the new item is purchased during the exemption period.

(4) Examples:

(A) A customer purchases a $35 shirt during the exemption period. After the exemption period, the customer exchanges the shirt for the same shirt in a different size. Tax is not due on the $35 price of the shirt.

(B) A customer purchases a $35 shirt during the exemption period. After the exemption period, the customer exchanges the shirt for a $35 jacket. Because the jacket was not purchased during the exemption period, tax is due on the $35 price of the jacket.

(C) During the exemption period, a customer purchases a $90 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the $90 dress for a $150 dress. Tax is due on the $150 dress. The $90 credit from the returned item cannot be used to reduce the sales price of the $150 item to $60 for exemption purposes.

(D) During the exemption period, a customer purchases a $60 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the $60 dress for a $95 dress. Tax is not due on the $95 dress because it was also purchased during the exemption period and otherwise meets the qualifications for the exemption.

(l) Returned merchandise. For a 30-day period after the temporary exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the retailer has sufficient documentation to show that tax was paid on the specific item. This 30-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The 30-day period is not intended to change a retailer's policy on the time period during which the retailer will accept returns.

(m) Mail, telephone, e-mail, and Internet orders and custom orders. Under the Texas sales tax law, a sale of tangible personal property occurs when a purchaser receives title to or possession of the property for consideration. Therefore, an item of eligible clothing or footwear may qualify for this exemption if:

(1) the item is both delivered to and paid for by the customer during the exemption period; or

(2) the customer orders and pays for the item and the retailer accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The retailer accepts an order when the retailer has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order, or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the company.

(n) Shipping and handling charges.

(1) Shipping and handling charges are included as part of the sales price of the clothing or footwear, whether separately stated [~~or not~~]. Except as provided in paragraph (2) of this subsection, if multiple items are shipped on a single invoice, the shipping and handling charge must be proportionately allocated to each item ordered, and separately identified on the invoice, to determine if any items qualify for the exemption. The following examples illustrate the way that these charges should be handled:

(A) A customer orders a jacket for $95. The shipping charge to deliver the jacket to the customer is $5.00. The sales price of the jacket is $100. Tax is due on the full sales price.

(B) A customer orders a suit for $285 and a shirt for $95. The charge to deliver the items is $15. The $15 shipping charge must be proportionately and separately allocated between the items: $285 / $380 = 75%; therefore, 75% of the $15 shipping charge, or $11.25, must be allocated to the suit, and separately identified on the invoice as such. The remaining 25% of the $15 shipping charge, or $3.75, must be allocated to the shirt, and separately identified on the invoice as such. The sales price of the shirt is $95 plus $3.75, which totals $98.75; therefore, the shirt qualifies for the exemption.

(C) A customer orders a suit for $285 and a shirt for $95. The charge to deliver the items is $20. The $20 shipping charge must be proportionately and separately allocated between the items: $285 / $380 = 75%; therefore, 75% of the $20 shipping charge, or $15, must be allocated to the suit, and separately identified on the invoice as such. The remaining 25% of the $20 shipping charge, or $5.00, must be allocated to the shirt, and separately identified on the invoice as such. The sales price of the shirt is $95 plus $5.00, which totals $100; because the sales price of the shirt exceeds $99.99, the purchase of the shirt is taxable.

(2) If the shipping and handling charge is a flat rate per package and the amount charged is the same regardless of how many items are included in the package, for purposes of this exemption the total charge may be attributed to one of the items in the package rather than proportionately and separately allocated between the items. For example, a customer orders five shirts, with four priced at $98 and one at $85. The retailer charges $10 for shipping and handling the order. The retailer would have charged the same amount for shipping and handling whether the customer ordered one shirt or five shirts. The retailer may choose [~~chose~~] to attribute the $10 shipping and handling charge to the shirt that was sold for $85 rather than allocate the charge proportionately and separately between the shirts. If the charge is attributed to the $85 shirt, the sales price of that shirt is $95, and all of the shirts will qualify for the exemption.

(o) Documenting exempt sales. The retailer is not required to obtain an exemption certificate on sales of eligible items during the exemption period. However, the retailer's records should clearly identify the type of item sold, the date on which the item was sold, and the sales price of the item.

(p) Reporting exempt sales. No special reporting procedures are necessary to report exempt sales made during the exemption period. Sales should be reported as currently required by law.

[~~(q) Local taxes. The three-day exemption also applies to local taxes, unless the local taxing authority adopts an appropriate order such as an ordinance to repeal the application of the exemption in the manner provided by Tax Code, §326.003. A taxing authority that has repealed the application of the exemption under this section may reinstate the exemption in the same manner. The repeal of the application of the exemption or a reinstated exemption takes effect on the first day of the first calendar quarter that occurs after the expiration of the first complete calendar quarter that occurs after the date on which the comptroller receives a copy of the order adopted. State taxes on qualifying purchases are still not due.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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34 TAC §3.367

The Comptroller of Public Accounts proposes an amendment to §3.367 relating to timber items. The amendment clarifies that persons who use off-road heavy-duty diesel equipment in timber operations may be exempt from the Texas Emissions Reduction Plan Surcharge imposed on that equipment. A new subsection (f) is added and the remaining subsections are renumbered accordingly.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing additional information regarding tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §151.3162 and §151.0515.

§3.367. Timber Items (Tax Code, §151.3162 and §151.317).

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Equipment--An apparatus, device, hand tool, simple machine, or expendable supply item. Examples include axes, handsaws, ropes, tree measurement devices, harnesses for tree climbing, eye protection goggles, ear protection devices, components of above-ground sprinkler systems or underground sprinkler systems, boards or mats used for access to commercial timber sites, and expendable supplies such as lubricants, solvents, and rags. The term "equipment" includes repair, replacement parts, and accessories for equipment. A computer or software program may qualify, if it is used exclusively in the production of timber. For example, a computer used exclusively to measure or track the growth of the trees to determine harvest time is a timber item. However, computers and software used in business accounting, bookkeeping, word processing, preparation of payrolls and employee evaluations, or other non-production activities are not timber items. The term does not include furniture, office supplies, or office equipment.

(2) Machinery--A powered-operated machine. Examples include chain saws, chippers, machinery used to drill holes for planting, machinery used to fertilize, harvesters, slashers, merchandisers including total merchandising systems, debarkers, delimbers, grapples, log stackers, feller bunchers, loaders including knuckleboom loaders, skidders, tractors, bulldozers, welding machines, compressors, and generators. The term "machinery" includes repair, replacement parts, and accessories for machinery. The term does not include motor vehicles or repair, replacement parts, or accessories for motor vehicles except for motor vehicles that qualify as timber machines and timber trailers.

(3) Original producer--a person who:

(A) harvests timber that the person owns and continues to own until the timber is processed, packed, or marketed; or

(B) is the grower of the timber, exercises predominant operational control over the growth of the timber, and bears the risk of loss of investment in the timber.

(4) Pollution control equipment--Machinery and equipment that are used by an original producer to control pollution that results from the processing, packing, or marketing of timber products by the original producer.

(5) Production of timber--Activities to prepare the production site or to plant, cultivate, or harvest commercial timber that will be sold in the regular course of business. The term includes construction, repair, and maintenance of private roads and lanes exclusively used for access to commercial timber sites. Activities at a harvest site to cut down commercial timber, debark, delimb, chip, slash, and to prepare and load harvested timber qualify as the production of timber but are not manufacturing operations as described in subsection (f) of this section. The use of a timber trailer to haul the harvested logs or chips from the harvest site for delivery to a saw mill also qualifies as the production of timber. Transportation of timber products from a location other than a commercial timber harvest site does not qualify.

(6) Timber machine--A self-propelled motor vehicle specially adapted to perform a specialized function for use primarily in timber operations. Timber machine does not include any self-propelled motor vehicle specifically designed or adapted for the primary purpose of transporting timber or timber products including a self-propelled motor vehicle designed to transport cargo and adapted with a cargo loading device. For information concerning the exemption of a timber machine from motor vehicle sales tax under Chapter 152 of the Tax Code, see §3.72 of this title (relating to Farm Machines, Timber Machines and Trailers).

(7) Timber trailer--A trailer or semitrailer designed for and used primarily in a timber operation. For information concerning the exemption of a timber trailer from motor vehicle sales tax under Chapter 152 of the Tax Code, see §3.72 of this title (relating to Farm Machines, Timber Machines and Trailers).

(b) Qualifying items. Persons may claim a partial refund or credit for Texas sales or use taxes paid on purchases of the following items:

(1) seedlings of trees commonly grown for commercial timber. Examples of trees commonly grown for commercial timber include hardwood or pine trees;

(2) defoliants, desiccants, fertilizers, fungicides, herbicides, and insecticides that are exclusively used in the production of timber for sale;

(3) machinery or equipment that is exclusively used in the production of timber for sale, including accessories, repair or replacement parts, and lubricants for the machinery or equipment;

(4) tangible personal property sold or used as a component of an underground irrigation system that is exclusively used in the production of timber for sale. For example, a contractor who has a lump-sum contract to install an underground irrigation system as an improvement to realty is the consumer of the incorporated materials and must pay sales tax on purchases. As authorized by Tax Code, §151.3162(b)(2), the contractor may request a partial refund or credit for tax that the contractor paid on the qualifying components of the irrigation system. For further information on contracts to improve real property, see §3.291 of this title (relating to Contractors); and

(5) machinery or equipment, including pollution control equipment, that the original producer uses to process, pack, or market timber product, if the machinery or equipment meets the requirements enumerated in subsection (d)(1) of this section. Examples of eligible machinery and equipment include stacking sticks used to dry the lumber, forklifts, and conveyors.

(c) Partial refund or credit for sales or use tax paid on qualifying items. A person who, during the period beginning October 1, 2001, and ending December 31, 2007, pays Texas sales or use tax on the purchase, lease, or rental of a qualifying item as set out in subsection (b) of this section may either request a partial refund of the tax directly from the comptroller or take a credit on a sales tax return for a portion of the tax. The amount of the partial refund or credit is determined by the date that the qualifying item is purchased, leased, or rented, as provided in paragraphs (1)-(3) of this subsection. At the time of the purchase, lease, or rental, the purchaser must pay sales or use tax to the retailer and may not issue an exemption certificate to the retailer. A purchaser must accrue and pay use tax to the comptroller on qualifying items purchased out-of-state for use in Texas (see §3.346, concerning Use Tax). The purchaser may take the partial credit on the sales and use tax return when the purchaser reports and pays the tax to the comptroller. The amount of credit will be determined by the date on which the purchaser brings the qualifying items into this state.

(1) If a qualifying item is purchased, leased, or rented from October 1, 2001 through December 31, 2003, then the purchaser is entitled to a refund or credit in an amount equal to 33% of the tax paid on the item.

(2) If a qualifying item is purchased, leased, or rented from January 1, 2004 through December 31, 2005, then the purchaser is entitled to a refund or credit in an amount equal to 50% of the tax paid on the item.

(3) If a qualifying item is purchased, leased or rented from January 1, 2006 through December 31, 2007, then the purchaser is entitled to a refund or credit in an amount equal to 75% of the tax paid on the item.

(4) A purchaser may seek a refund or take a credit for tax paid on exempt timber items within the following limitations:

(A) A purchaser who elects to take a credit must claim the credit on a sales or use tax return for a report period that ends not later than the first anniversary of the date that the timber item was purchased, leased, or rented. For example, a quarterly filer who purchases and pays tax on a qualifying item on October 2, 2001, may take the 33% credit on any quarterly return up to and including the return for the quarter that ends September 30, 2002.

(B) A purchaser who elects to claim a refund directly from the comptroller must submit a written claim not later than December 31 of the calendar year immediately following the year in which the tax was paid. For example, a purchaser who purchases a timber item and pays tax on October 2, 2001, must submit a refund claim for 33% of tax paid by December 31, 2002.

(C) A purchaser who fails to take a credit on a return before the expiration of the limitation period provided in subparagraph (A) of this paragraph may still request a refund directly from the comptroller within the limitation period provided in subparagraph (B) of this paragraph.

(5) Interest. Sales or use taxes paid on timber items that are purchased, leased, or rented from October 1, 2001 through December 31, 2007, are not taxes paid in error, and no interest under Tax Code, §111.064, is due on partial refunds or credits taken on timber items.

(6) Taxable services. Sales or use taxes paid on maintenance, repair, or remodeling performed on qualifying machinery or equipment from October 1, 2001 through December 31, 2007, are not eligible for the partial refund or credit. A purchaser may claim a partial refund or take a credit for tax paid on separately stated charges for parts, accessories, and lubricants for qualifying machinery or equipment.

(7) Rentals and Leases. The amount of partial refund or credit will be determined by the date on which the lessee takes possession of the items. The lessee may not claim a refund or take credit until tax has been paid. The limitations in which the refund or credit must be claimed or taken, as provided in paragraph (4) of this subsection, are based on the date the lessee paid tax.

(d) Original producer.

(1) The original producer may qualify for the partial refund or credit only if:

(A) the processing, packing, or marketing occurs at or from a location operated by the original producer;

(B) at least 50% of the value of the timber products processed, packed, or marketed at or from the location during the most recent calendar year is attributable to products produced by the original producer and not purchased or acquired from others; and

(C) the original producer does not for consideration process, pack, or market timber products that belong to others, unless the value of the product that belongs to another person is 5.0% or less of the total value of the timber products processed, packed, or marketed by the original producer.

(2) Two or more corporations that operate timber activities on the same or adjacent tracts of land and that are entirely owned by the same individual or a combination of the individual, the individual's spouse, and the individual's children may qualify as an original producer for the purposes of this paragraph.

(e) Exemption for timber items. After December 31, 2007, the purchase, lease, or rental of timber items will be exempt from sales or use tax, and a purchaser may issue a retailer a properly completed exemption certificate in lieu of paying tax on qualifying items that are purchased, leased, or rented after December 31, 2007. After December 31, 2007, taxable services performed on qualifying items will be exempt under Tax Code, §151.3111.

(f) Exemption for off-road, heavy-duty diesel equipment. A person who uses off-road heavy-duty diesel equipment in timber operations may claim an exemption from the Texas Emissions Reduction Plan Surcharge imposed by Tax Code §151.0515 provided the equipment is exclusively used in the production of timber for sale.

(g) [~~(f)~~] Manufacturing. A person who processes or fabricates tangible personal property to be sold is a manufacturer and may be entitled to manufacturing exemptions provided by Tax Code, 151.318. See §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing) for information on tax exemptions for

equipment and supplies used in manufacturing. For information regarding wrapping and packaging supplies purchased by manufacturers, see §3.314 of this title (relating to Wrapping, Packing, Packaging Supplies, Containers, Labels, Tags, [and] Export Packers,and Stevedoring Materials and Suppliers).

(h) [(g)] Gas and electricity exemption. Effective October 1, 2001, natural gas and electricity used in timber operations are exempt from sales and use taxes. See §3.295 of this title (relating to Natural Gas and Electricity) for further information regarding the exemption of natural gas and electricity.

(i) [(h)] Buildings. Buildings, structural components of buildings, and/or the materials used to build, construct, or fabricate buildings are not timber items and are taxable.

(1) Buildings include any structures or edifices enclosing a space within their walls, and usually are covered by a roof, the purpose of which may be to provide storage, shelter, or housing, or to provide work, office, or sales space. Examples of buildings include residential quarters, offices, storage facilities, and warehouses.

(2) A building or structure that is essentially an item of equipment or machinery necessary for timber production may be considered timber equipment if it is specifically designed for such use and cannot be economically used for any other purpose. For example, a commercial greenhouse is timber equipment if it is used to grow seedlings of trees commonly grown for commercial timber.

(3) Pollution control equipment and machinery or equipment used in processing, packing, or marketing by an original producer, may qualify even if the machinery and equipment are affixed to real property. For a timber producer to qualify for sales tax refunds or credits on qualifying items that are installed under a contract to improve real property, the timber producer must enter into a separated contract. Additionally, the contract must separately state the charges for the qualifying items from the charges for other tangible personal property. See §3.291 of this title (relating to Contractors) for information regarding new construction contracts. See §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance) for information regarding nonresidential real property repair, remodeling, or restoration.

(j) [(i)] Repeal of previous exemption. Effective October 1, 2001, the exemption in Tax Code, §151.3161, that took effect on October 1, 1995, is repealed. That provision allowed a tax exemption for the first $50,000 of the purchase price of each complete unit of machinery or equipment used exclusively in a commercial timber operation to prepare the site, plant, cultivate, or to harvest timber in the regular course of business.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

TRD-200500315
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 475-0387

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SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.430

The Comptroller of Public Accounts proposes a new §3.430, concerning records required, information required. The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule sets out records required to be maintained by motor fuel tax license holders, unlicensed retail dealers of motor fuel, and unlicensed users of motor fuel claiming refund. The new rule also provides information required to obtain a motor fuel tax license or registration under Tax Code, Chapter 162.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new rule is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code, Title 2.

The new rule implements Tax Code, §§162.004, 162.012, 162.107, 162.108, 162.115, 162.127, 162.216, 162.208, 162.209, 162.229, and 162.309.

§3.430. Records Required, Information Required (Tax Code, §§162.004, 162.012, 162.107, 162.108, 162.115, 162.127, 162.216, 162.208, 162.209, 162.229, and 162.309).

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.

(b) Records Required.

(1) A supplier and permissive supplier, as those terms are defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution of gasoline or diesel fuel and shall keep records showing:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel refined, compounded, or blended;

(C) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use;

(E) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident; and

(F) an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading;

(ii) exported from this state by destination state or country; and

(iii) imported during the preceding calendar month by state or country of origin.

(2) A supplier or permissive supplier when acting as a distributor, importer, exporter, blender, aviation fuel dealer, or motor fuel transporter is subject to the record keeping requirements of that license.

(3) A distributor of gasoline or diesel fuel, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution of gasoline or diesel fuel and shall keep records that show:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel refined, compounded, or blended;

(C) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use;

(E) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident;

(F) an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading;

(ii) exported from this state by destination state or country; and

(iii) imported during the preceding calendar month by state or country of origin; and

(G) proof of payment of tax to the destination state in a form acceptable to the comptroller for gasoline or diesel fuel exported from this state under Tax Code, §162.204(a)(4)(A).

(4) A distributor when acting as an importer, exporter, blender, aviation fuel dealer, or motor fuel transporter is subject to the record keeping requirements of that license.

(5) An importer, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution of gasoline or diesel fuel and shall keep records that show:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel refined, compounded, or blended;

(C) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use;

(E) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident; and

(F) an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading;

(ii) exported from this state by destination state or country; and

(iii) imported during the preceding calendar month by state or country of origin.

(6) An importer when acting as an exporter or blender is subject to the record keeping requirements of that license.

(7) An exporter, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution and shall keep records that show:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel refined, compounded, or blended;

(C) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale or use;

(E) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident;

(F) an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading; and

(ii) exported from this state by destination state or country;

(G) proof of payment of tax to the destination state or proof that the transaction was exempt in the destination state, in a form acceptable to the comptroller if an exemption under Tax Code, §162.104(a)(4)(B) and §162.204(a)(4)(B) is claimed.

(8) A blender, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution and shall keep records that show the number of gallons of:

(A) all gasoline or diesel fuel inventories on hand at the first of each month;

(B) all gasoline or diesel fuel refined, compounded, or blended;

(C) all blending agents blended with gasoline or diesel fuel;

(D) all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(E) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale or use; and

(F) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident.

(9) A terminal operator, as that term is defined in Tax Code, §162.001, shall keep a record showing:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month, including the name and license number of each owner and the amount of gasoline or diesel fuel held for each owner;

(B) the number of gallons of all gasoline or diesel fuel received, showing the name of the seller and the date of each purchase or receipt;

(C) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use;

(D) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident; and

(E) the number of gallons of an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading;

(ii) exported from this state by destination state or country; and

(iii) imported during the preceding calendar month by state or country of origin.

(10) A dealer, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution and shall keep records that show the number of gallons of:

(A) gasoline or diesel fuel inventories on hand at the first of each month;

(B) all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(C) all gasoline or diesel fuel sold or used, showing the date of the sale or use; and

(D) all gasoline or diesel fuel lost by fire, theft, or accident.

(11) An interstate trucker, as that term is defined in Tax Code, §162.001, shall keep a record on an individual-vehicle basis of:

(A) the total miles traveled, evidenced by odometer or hubodometer readings, everywhere by all vehicles traveling to or from this state, and the total miles traveled, evidenced by odometer or hubodometer readings, in this state, including for each individual vehicle:

(i) date of each trip (starting and ending);

(ii) trip origin and destination;

(iii) beginning and ending odometer or hubodometer reading of each trip;

(iv) odometer or hubodometer reading entering Texas, and odometer or hubodometer reading leaving Texas;

(v) power unit number or vehicle identification number or license plate number;

(B) the total quantity purchased and delivered at retail of gasoline, diesel fuel or liquefied gas everywhere by all vehicles traveling to or from this state, and the total quantity of gasoline, diesel fuel or liquefied gas purchased and delivered into the fuel supply tanks of motor vehicles in this state, including for each individual vehicle:

(i) date of purchase;

(ii) name and address of seller;

(iii) number of gallons or liters purchased;

(iv) type of fuel purchased;

(v) price per gallon or liter; and

(vi) unit number of the vehicle into which the fuel was placed.

(C) An interstate trucker that uses a distribution log to record removals from the person's own bulk storage into a motor vehicle must include on each log the person's stamped or preprinted name and address, and for each individual delivery:

(i) date of delivery;

(ii) number of gallons or liters of gasoline, diesel fuel or liquefied gas delivered;

(iii) license plate or vehicle identification number or power unit number;

(iv) odometer or hubodometer reading; and

(v) signature of the user.

(D) An interstate trucker that maintains bulk fuel storage must keep a record of the number of gallons of gasoline, diesel fuel, or liquefied gas beginning and ending inventories, all invoices of bulk purchases and records to substantiate all fuel withdrawals from storage.

(12) An aviation fuel dealer, as that term is defined in Tax Code, §162.001, shall keep the shipping document that relates to each receipt for distribution and shall keep records that show:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(C) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident;

(D) the number of gallons of all gasoline or diesel fuel sold or used in aircraft or aircraft servicing equipment; and

(i) the name of the purchaser or user of gasoline or diesel fuel;

(ii) the date of the sale or use of gasoline or diesel fuel; and

(iii) the registration or "N" number of the airplane or a description or number of the aircraft or a description or number of the aircraft servicing equipment in which gasoline or diesel fuel is used.

(13) A dyed diesel fuel bonded user, as that term is defined in Tax Code, §162.001, shall keep a record showing the number of gallons of:

(A) dyed and undyed diesel fuel inventories on hand at the first of each month;

(B) dyed and undyed diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(C) dyed and undyed diesel fuel delivered into the fuel supply tanks of motor vehicles;

(D) dyed and undyed diesel fuel used in off-highway equipment or for other nonhighway purposes and described in Tax Code, §162.229(c); and

(E) dyed and undyed diesel fuel lost by fire, theft, or accident.

(14) A motor fuel transporter, as that term is defined in Tax Code, §162.001, shall keep a complete and separate record of each intrastate and interstate transportation of gasoline or diesel fuel, showing:

(A) the date of transportation;

(B) the name of the consignor and consignee;

(C) the means of transportation;

(D) the quantity and kind of gasoline or diesel fuel transported;

(E) the points of origin and destination;

(F) the import verification number if that number is required by §3.441 of this title (relating to Documentation of Imports and Exports, Import Verification Numbers, Export Sales, and Diversion Numbers); and

(G) full data concerning the diversion of shipments, including the number of gallons diverted from interstate to intrastate and intrastate to interstate commerce, the diversion number if that number is required by §3.441 of this title.

(15) A licensed liquefied gas dealer, as that term is described in Tax Code, §162.304, shall keep a record of all liquefied gas sold or delivered for taxable purposes.

(16) A person who does not hold a license under Tax Code, Chapter 162, who files a claim for refund of gasoline or diesel fuel taxes shall keep the shipping document that relates to each receipt of gasoline or diesel fuel, original invoice issued by the seller, and distribution log to support gallons of gasoline or diesel fuel removed from the person's own bulk storage and for each individual delivery:

(A) the date of delivery;

(B) the number of gallons of gasoline or diesel fuel delivered;

(C) the signature of user; and

(D) the type or description of off-highway equipment into which the gasoline or diesel fuel was delivered or the type of motor vehicle identified by state highway licensed plate number, vehicle identification number, or unit number assigned to motor vehicle and odometer or hubmeter reading.

(c) The comptroller may require selective schedules from a supplier, permissive supplier, distributor, importer, exporter, blender, terminal operator, motor fuel transporter, dealer, aviation fuel dealer, dyed diesel fuel bonded user, and interstate trucker for any purchase, sale, or delivery of gasoline or diesel fuel if the schedules are consistent with the requirements of Tax Code, Chapter 162.

(d) The records required by this section must be kept for at least four years and must be open to inspection at all times by the comptroller and the attorney general.

(e) A person who claims a deduction or exclusion authorized by law must keep records that substantiate the claim. When records regarding the amount and applicability of any deductions or exclusions from the motor fuels tax are insufficient, the comptroller may estimate deductions or exclusions based on any records available or may disallow all deductions and exclusions. No exclusions for loss by fire, accident, or theft will be allowed unless accompanied by fire department, environmental regulatory agency, or police department reports that verify the fire, accident, or theft.

(f) Failure to keep adequate records. If any person who is required by this section to keep accurate records of receipts, purchases, sales, distributions, or uses of gasoline or diesel fuel, fails to keep those records, the comptroller may estimate the tax liability based on any information available.

(g) The comptroller may suspend any permit or license the comptroller has issued to a person if the person fails to keep the records required by this section.

(h) Records may be written, kept on microfilm, stored on data processing equipment, or may be in any form that the comptroller can readily examine.

(i) Information required.

(1) The comptroller may require any person who must hold a license or registration under Tax Code, Chapter 162, to furnish information that the comptroller needs to:

(A) identify any person who applies for a motor fuels license, uses a signed statement to purchase tax-free dyed diesel fuel, or transports motor fuel in Texas by truck, railcar, or vessel, or any person who is required to file a return;

(B) determine the amount of bond, if any, required to commence or continue business;

(C) determine possible successor liability; and

(D) determine the amount of tax the person is required to remit, if any.

(2) The information required may include, but is not limited to, the following:

(A) name of the actual owner of the business;

(B) name of each partner in a partnership;

(C) names of officers and directors of corporations and other organizations;

(D) all trade names under which the owner operates;

(E) mailing address and actual locations of all business outlets;

(F) license numbers, title numbers, and other identification of business vehicles;

(G) identification numbers assigned by other governmental agencies, including social security numbers, federal employers identification numbers, and driver's license numbers;

(H) names of gasoline and diesel fuel suppliers or distributors with whom the person will transact business; and

(I) names and last known addresses of former owners of the business.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2005.

TRD-200500270
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 475-0387

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34 TAC §3.432

The Comptroller of Public Accounts proposes new §3.432, concerning refunds on gasoline and diesel fuel tax. The amendment incorporates legislative changes made by House Bill 2458, 78th Legislature, 2003, Regular Session, which amended Tax Code by adding Chapter 162. The proposed rule provides guidelines for claiming a tax refund or credit for taxes paid on gasoline or diesel fuel used off the highway, resold to certain exempt entities, exported from Texas, loss caused by fire, theft, or accident, and other exempt uses authorized by law.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This rule is proposed under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The proposed rule implements Tax Code §§162.104, 162.125, 162.127, 162.128, 162.204, 162.227, 162.229, and 162.230.

§3.432. Refunds on Gasoline and Diesel Fuel Tax (Tax Code, §§162.104, 162.125, 162.127, 162.128, 162.204, 162.227, 162.229, and 162.230).

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Tile 34, Part 1, Chapter 3, Subchapter L.

(b) Refunds and credits. A person may file a claim for refund or a license holder may take a credit on a return for taxes paid on gasoline or diesel fuel used off the highway, for certain resale, for export from Texas, for loss caused by fire, theft, or accident, or other use if authorized by law. The claim for refund or credit must be filed in accordance with this section.

(c) Time limitation. A claim for refund or credit must be filed before the expiration of the following time limitations, as provided by Tax Code, §162.128 and §162.230:

(1) one year from the first day of the calendar month that follows:

(A) purchase;

(B) tax exempt sale;

(C) use, if withdrawn from one's own storage for one's own use;

(D) export from Texas; or

(E) loss by fire, theft, or accident; or

(2) for dyed and undyed diesel fuel used in off-highway equipment, stationary engines, or for other nonhighway purpose on or after January 1, 2004, a claim for refund on diesel fuel under subsections (e), (f), and (g) of this section must be postmarked no later than December 31, 2004, or

(3) four years from the due and payable date for a tax return on which an overpayment of tax was made by a licensed supplier, permissive supplier, distributor, importer, exporter, or blender who determines that taxes were erroneously reported or that more taxes were paid than were due because of a mistake of fact or law. The supplier, permissive supplier, distributor, importer, exporter, or blender must establish the credit by filing an amended tax return for the period in which the error occurred and tax payment was made to the comptroller.

(d) Filing forms and documentation. A claim for refund or credit must be on a form prescribed by the comptroller and must be submitted within the applicable limitations period provided by subsection (c) of this section. A person or license holder is required to maintain and have available for inspection the following documentation and information to substantiate a claim for refund or credit:

(1) an original purchase invoice with the name and address of the seller or name of the purchaser, whichever is applicable. For refund or credit purposes, the original invoice may be a copy of the original impression if the copy has been stamped "Customer Original Invoice," "Original for Tax Purposes," or similar wording. If a copy is so stamped, the original and all other copies must then be stamped "Not Good for Tax Purposes" or similar wording. Invoices of original impression submitted in support of refund claims must be without the above wording stamped or imprinted;

(2) evidence as to who paid the tax. A purchaser claiming a refund or credit must have an invoice that either separately states the tax amount paid or a written statement that the price included state tax. A seller claiming a refund or credit must have issued an invoice, signed by the purchaser, that contains a statement that no state tax was collected or that it was a tax-free sale;

(3) if refund or credit is claimed on fuel purchased at retail the purchase invoice must note the identification of each vehicle or type of equipment (e.g., including railway engines, motor boats, refrigeration units, stationary engines, off-highway equipment, or nonhighway farm equipment that has traveled between multiple farms or ranches as allowed in §3.440 of this title (relating to On-Highway Travel of Farm Machinery)) in which the fuel was delivered and used;

(4) if refund or credit is claimed on fuel removed from the claimant's own bulk storage, then a distribution log as provided by Tax Code, §162.127 and §162.229. The distribution log must contain the name and address of the user and, for each individual removal from the bulk storage the following information:

(A) the date the fuel was removed;

(B) the number of gallons removed;

(C) the type of fuel removed;

(D) signature of the person removing the fuel; and

(E) the type or description of the off-highway equipment into which the fuel the was delivered, or the identification of both on-highway and off-highway motor vehicles into which the fuel was delivered, including the state highway license number or vehicle identification number and odometer or hubmeter reading, or description of other off-highway use.

(e) Refund or credit for gasoline or dyed and undyed diesel fuel used solely for an off-highway purpose. A claim for refund or credit for gasoline or dyed and undyed diesel fuel used solely for off-highway purposes must list each off-highway vehicle or piece of equipment or document other nonhighway use and the total number of gallons used by way of a distribution log as described in subsection (d) of this section. The refund or credit for dyed or undyed diesel fuel used for off-highway purpose expires on January 1, 2005.

(f) Refund or credit for gasoline or dyed and undyed diesel fuel used by a lessor of off-highway equipment. The lessor of off-highway equipment who claims a refund or credit of state fuel tax must maintain documentation that shows that the state tax was assessed and paid, a list of each piece of off-highway equipment, and a distribution log as described in subsection (d) of this section of the number of gallons of gasoline, dyed diesel fuel, and undyed diesel fuel used in both on-highway and off-highway vehicles and equipment. A lessor who claims a refund of state fuel tax may include a separate refueling, fuel reimbursement, or fuel service charge on the invoice, if the invoice contains a statement that the fuel charge does not include state motor fuel taxes. The refund or credit for dyed or undyed diesel fuel used by a lessor of off-highway equipment expires on January 1, 2005.

(g) Refund or credit for gasoline or dyed and undyed diesel fuel used in a motor vehicle operated exclusively off-highway, except for incidental highway use. A claim for refund or credit may be filed by a person who used gasoline or dyed and undyed diesel fuel in motor vehicles incidentally on the highway, when the incidental travel on the public highway is infrequent, unscheduled, and insignificant to the total operation of the motor vehicle, and only for the purpose of transferring the base of operation or to travel to and from required maintenance and repair. A refund or credit for dyed or undyed diesel fuel used in a motor vehicle operated exclusively off-highway, except for incidental highway use, expires on January 1, 2005.

(1) A record that shows the date and miles traveled during each highway trip must be maintained.

(2) 1/4 gallon for each mile of incidental highway travel shall be deducted from the number of gallons claimed.

(h) Refund or credit for gasoline used in gasoline-powered motor vehicles equipped with power take-off or auxiliary power units. A person who files a claim for refund or a license holder who takes a credit on a tax return for gasoline used in the operation of power take-off or auxiliary power units must use one of the following methods in determination of the amount of gasoline used:

(1) direct measurement method. The use of a metering device, as defined by §3.435 of this title (relating to Metering Devices Used to Claim Refund of Tax on Gasoline Used in Power Take-Off and Auxiliary Power Units) is an acceptable method for determination of fuel usage. A person who claims a refund or credit for gasoline used to propel motor vehicles with approved measuring or metering devices that measure or meter the fuel used in stationary operations must maintain records on each vehicle so equipped, and the records must reflect:

(A) the miles driven as shown by any type of odometer or hubmeter;

(B) the gallons delivered to each vehicle; and

(C) the gallons used as recorded by the meter or other measuring device;

(2) gasoline-powered ready mix concrete trucks and solid waste refuse trucks equipped with power take-off or auxiliary power units. Operators of gasoline-powered ready mix concrete trucks and solid waste refuse trucks that are equipped with power take-off or auxiliary power units that are mounted on the motor vehicle and use the fuel supply tank of the motor vehicle may claim refund on 30% of the total gasoline used in this state by each vehicle. A solid waste refuse truck means a motor vehicle equipped with a power take-off or auxiliary power unit that provides power to compact the refuse, open the back of the container before ejection, and eject the compacted refuse;

(3) mileage factor method. The nontaxable use may be determined by computing the taxable use at 1/4 gallon for each mile traveled, as recorded by the odometer or hubmeter and subtracting that amount from the total quantity of gasoline delivered into the motor vehicle fuel supply tanks. The remainder will be considered nontaxable, and a tax refund or tax credit may be claimed on that quantity of fuel;

(4) two tank method. A motor vehicle may be equipped with two fuel tanks and an automatic switching device that a spring-activated air release parking brake operates, and that switches from one tank that is designated for highway use to another tank that is not so designated when the vehicle is stationary. The highway tank and the not-for-highway tank may not be connected by crossover line or equalizer line of any kind. The tax paid on the gasoline delivered to the tank designated not-for-highway use may be claimed as a tax refund or taken as a tax credit. All gasoline delivered into the fuel supply tanks of a vehicle that is equipped with an automatic switching device must be invoiced as taxable. Separate invoices must be issued for deliveries of fuel into each tank. A notation that indicates that fuel was delivered into the tank designated not- for-highway use must be made on invoices;

(5) fixed percentage method. In lieu of the use of one of the previously mentioned methods, the owner or operator of a gasoline-powered motor vehicle that is equipped with a power take-off or auxiliary power unit that is mounted on the vehicle may claim a credit or refund of the tax paid on 5.0% of the total taxable gasoline used in this state by each vehicle so equipped;

(6) proposed alternate methods. Proposals for the use of methods that this section does not specifically cover to determine the amount of gasoline used in power take-off operations or auxiliary power units may be submitted to the comptroller for approval;

(7) accurate mileage records must be kept regardless of the method used;

(8) beginning September 1, 2003, motor vehicle air conditioning and heating systems are no longer considered power take-off systems. A person may file a claim for refund of state taxes paid on gasoline used in the operation of an air conditioning or heating system prior to September 1, 2003.

(i) Refund or credit for gasoline or diesel fuel sold to or used by an exempt entity.

(1) A license holder, other than an aviation fuel dealer, may take a credit on a return for taxes paid on the purchase of gasoline or

diesel fuel that is resold tax-free if the purchaser was one of the follow entities:

(A) the United States or federal government and the purchase is for its exclusive use. The federal government means any department, board, bureau, agency, corporation, or commission that the United States government has created or wholly owns. Exclusive use by the federal government means use of fuel only in motor vehicles or other equipment that the federal government operates. A person operating under a contract with the federal government is not an exempt entity. Evidence that sales were made to the federal government must be maintained and consist of:

(i) a United States tax exemption certificate--Standard Form 1094 or similar certificate that includes the same information as the Standard Form 1094; or

(ii) copies of the invoice(s) when a United States National credit card--Standard Form 149, was used for the purchase, which invoice must include the license plate number or official vehicle designation, if fuel is delivered into the fuel supply tank of a motor vehicle; or

(iii) a copy of a contract between the seller and the federal government supporting the sales invoices or purchase vouchers;

(B) a Texas public school district and the purchase is for its exclusive use. Exclusive use by a public school district means use of fuel only in motor vehicles or other equipment that the public school district operates;

(C) a commercial transportation company with a contract to provide public school transportation services to a Texas public school district under Education Code, §34.008, and the gasoline or diesel is used exclusive to provide those services;

(D) a Texas non-profit electric cooperative organized under Utilities Code, Chapter 161, and telephone cooperative organized under Utilities Code, Chapter 162, and the purchase is for its exclusive use. Exclusive use by an electric or telephone cooperative means use of fuel only in motor vehicles or other equipment that the electric or telephone cooperative operates.

(2) An exempt entity enumerated in paragraph (1)(A)-(D) of this subsection, may claim a refund of taxes paid on gasoline or diesel fuel purchased for its exclusive use.

(j) Refund or credit for gasoline or diesel fuel exported from Texas or sold for export.

(1) A person may claim a refund or a licensed supplier, permissive supplier, distributor, importer, exporter, or blender may take a credit on a return for taxes paid on gasoline or diesel fuel that the person or the license holder exports from this state in quantities of 100 or more gallons. Proof of export must be one of the following:

(A) proof of export that United States Customs officials have certified, if the fuel was exported to a foreign country;

(B) proof of export that a port of entry official of the state of importation has certified, if the state of importation maintains ports of entry;

(C) proof from the taxing officials of the state into which the fuel was imported that shows that the exporter has accounted for the fuel on that state's tax returns;

(D) other proof that the fuel has been reported to the state into which the gasoline or diesel fuel was imported; or

(E) a common or contract carrier's transporting documents (see §3.439 of this title (relating to Motor Fuel Transporting Documents)) that list the consignor and consignee, the points of origin and destination, the number of gallons shipped or transported, the date of export, and the kind of fuel exported;

(2) A licensed supplier, permissive supplier or distributor may take a credit on a return for taxes paid on gasoline or diesel fuel resold tax-free to a licensed supplier, permissive supplier, distributor, importer, or exporter for immediate export from this state under the following circumstances:

(A) a shipping document or bill of lading issued by the seller that shows the destination state;

(B) the purchaser (exporter) is licensed in Texas as a supplier, permissive supplier, distributor, importer, or exporter; and

(C) the purchaser is licensed in the destination state to pay that state's tax; or

(D) if the destination is a foreign country, a shipping document or bill of lading issued by the seller that shows the foreign destination.

(3) Effective January 1, 2006, a licensed supplier or permissive supplier must collect either the destination state's tax or Texas tax from the purchaser on gasoline or diesel fuel exported to another state.

(k) Refund or credit for gasoline or diesel fuel loss by fire, theft, or accident. A person may claim a refund or a license holder may take a credit on a return for taxes paid on 100 or more gallons of gasoline or diesel fuel loss by fire, theft, or accident. The claimant must maintain records of the incident that establishes that the exact quantity of fuel that has been claimed as lost was actually lost, and that the loss resulted from that incident. The time limitation prescribed in subsection (c)(1) of this section is determined by the date of the first incident of a multiple incident loss that totals 100 gallons or more. A claim for refund for loss by fire, theft, or accident shall be accompanied by fire department, police department, or regulatory agency reports as appropriate.

(1) If the incident is a drive-away theft at a retail outlet (i.e., theft occurs when a person delivers gasoline or diesel fuel into the fuel supply tank(s) of a motor vehicle at a retail outlet without payment for the fuel), the following documentation shall be maintained:

(A) a police department report or evidence that the incident of drive-away theft has been or will be taken as a deduction on the federal income tax return during the same or the subsequent reporting period; and

(B) separate report for each incident that the employee(s) who witnessed the event prepared and signed. The report must include the date and time of occurrence, type of fuel, number of gallons, outlet location, and, if the theft is reported to a police department, the police case number.

(2) If the accidental loss was incurred through a leak in a line or storage tank, the minimum proof required is:

(A) a statement by the person who actually dug up or otherwise examined the hole or leak. Such statement should articulate the extent of the leak, the date of the examination, and the person's name and title; and

(B) a statement of the actual loss as determined by computing the measured inventory next preceding the discovery of the accidental leak, plus motor fuel salvaged from the leaky tank or line, if any, less intervening withdrawals for sale or use.

(3) A person claiming a refund or credit under this subsection must take inventory on the first of each month and promptly correct the inventory for any loss that has occurred in the preceding month. If inventories have not been accurately or timely measured, or if complete records have not been kept of all withdrawals for sale or use as required by law, a claim for refund or credit cannot be honored for payment.

(l) Refund or credit for gasoline or diesel moved between terminals. A licensed supplier or permissive supplier may take a credit on a return for tax paid on gasoline or diesel fuel removed from an IRS registered terminal that is transferred by truck or railcar to another IRS registered.

(m) Refund or credit for gasoline or diesel fuel sold to or purchased by a licensed aviation fuel dealer.

(1) A licensed supplier, permissive supplier, or distributor may take a credit on a return for tax paid on gasoline or diesel fuel sold to a licensed aviation fuel dealer for delivery solely into the fuel supply tanks of aircraft, aircraft servicing equipment, or into a bulk storage tank of a licensed aviation fuel dealer.

(2) A licensed aviation fuel dealer may claim refund for tax paid on gasoline or diesel fuel delivered into the fuel supply tanks of aircraft, aircraft servicing equipment, or into a bulk storage tank of another licensed aviation fuel dealer.

(n) Refund or credit for gasoline or diesel fuel used outside of Texas by a licensed interstate trucker. A licensed interstate truck may take a credit on a tax return for tax paid on gasoline or diesel fuel purchased in Texas and used outside of Texas in commercial vehicles operated under an interstate trucker license. The credit may be taken on the return for the period in which the purchase occurred. If the credit exceeds the amount of tax reported due on that return, the licensed interstate trucker:

(1) may carry forward the excess credit on any of the three successive quarterly returns until exhausted, or until the due date of the third successive quarterly return, whichever occurs first; or

(2) may seek refund of the excess credit by filing a claim for refund on or before the due date of the third successive quarterly return; or

(3) if returns are filed on an annual basis an interstate trucker may seek refund or credit no later than the due date of the annual return; and

(4) any remaining credit not taken on return or claimed as a refund before the prescribed deadline expires.

(o) Refund for gasoline or diesel fuel sold on Indian reservations. A retailer located on an Indian reservation recognized by the United States government may claim refund of tax paid on gasoline or diesel fuel resold tax-free to exempt tribal entities and tribal members. The retail dealer must maintain records that include the original purchase invoices that show that the state tax was paid and sales invoices that include:

(1) the name of the purchaser;

(2) the date of the sale;

(3) the number of gallons sold;

(4) the type of fuel sold; and

(5) a written statement that no state tax was collected or that it was a tax-free sale.

(p) The right to receive a refund or take a credit under this section is not assignable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

TRD-200500308
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 475-0387

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34 TAC §3.441

The Comptroller of Public Accounts proposes new §3.441, concerning documentation of imports and exports, import verification numbers, export sales, and diversion numbers. The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides requirements for a license holder to document imports and exports of motor fuel, procedure to obtain import verification and diversion numbers and conditions under which a license holder makes an export sale.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas, 78711.

The new rule is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code. Title 2.

The proposed rule implements Tax Code, §§162.001, 162.004 and 162.016.

§3.441. Documentation of Imports and Exports, Import Verification Numbers, Export Sales, and Diversion Numbers. (Tax Code, §§162.001, 162.004 and 162.016)

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.

(b) Imports.

(1) Imports. Motor fuel imported into Texas by or for a seller constitutes an import by that seller. Motor fuel imported into Texas by or for a purchaser constitutes an import by that purchaser.

(2) Import Verification Number. An importer must obtain from the comptroller an import verification number for each load of gasoline or diesel fuel imported into Texas by truck or railroad tank car. An import verification number must be obtained within 72 hours before or after the gasoline or diesel fuel enters Texas. The importer must write the import verification number on the shipping document issued for that fuel.

(3) Documentation. An importer must possess a shipping document created by the terminal or bulk plant where the fuel was loaded (see §3.439 of this title (relating to Motor Fuel Transportation Documents) for motor fuel imported by any means into Texas).

(c) Export Sales.

(1) A licensed supplier, permissive supplier or distributor makes an export sale when it sells motor fuel in Texas to a licensed exporter, importer, distributor, supplier or permissive supplier who then, prior to any other sale or use in Texas, sends or transports the motor fuel outside the state. The bill of lading or shipping document must list the out of state destination.

(2) A licensed supplier, permissive supplier, or distributor who makes an export sale will not be liable for tax on motor fuel that the purchaser diverts provided that the seller issued a bill of lading or shipping document that shows that the fuel is to be delivered to a destination outside Texas.

(3) Documentation.

(A) The comptroller may request proof of export from the exporter to verify that the motor fuel was exported from Texas. This proof may consist of:

(B) proof of export that a U.S. customs office has certified, if the fuel was exported from this state to a foreign country;

(C) proof of export that a port of entry of the state of importation has certified, if ports of entry are maintained by that state;

(D) proof from the tax officials of the state into which the motor fuel was imported, which shows that the exporter has accounted for the motor fuel on the state's tax report; or

(E) other proof that the fuel has been reported to the state into which the motor fuel was imported.

(d) Diversion Number. An importer or exporter who diverts the delivery of a load of gasoline or diesel fuel being transported by truck or railroad tank car from the destination state or country that is preprinted on the shipping document that has been issued for that fuel to another state or country must obtain a diversion number from the comptroller. A diversion number must be obtained within 72 hours before or after the diversion. The importer, exporter, or common or contract carrier must write the diversion number on the shipping document issued for that fuel.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2005.

TRD-200500271
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 475-0387

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34 TAC §3.442

The Comptroller of Public Accounts proposes a new §3.442, concerning bad debts or accelerated credit for non-payment of taxes. The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides the criteria necessary for a licensed distributor, supplier, or permissive supplier to file a claim for refund on the monthly return for a bad debt deduction or accelerated credit for the non-payment of tax, requirements for repaying tax when payment is recovered, and criminal and civil penalties for issuing bad checks for the payment of fuel.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas, 78711.

The new rule is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code, Title 2

The new rule implements Tax Code, §§162.113, 162.116, 162.126, 162.214, 162.228, and 162.409.

§3.442. Bad Debts or Accelerated Credit for Non-payment of Taxes. (Tax Code, §§162.113, 162.116, 162.126, 162.214, 162.228, and 162.409).

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004, under Tax Code, Chapter 162. Motor fuel transactions that occur before January 1, 2004, are governed by provisions of Chapter 3, Subchapter L of this title, and promulgated under Tax Code, Chapter 153.

(b) Bad Debt Deductions. A licensed distributor, supplier, or permissive supplier may file a claim for refund on the monthly return of taxes paid on fuel that was sold on account that is later determined to be uncollectible, worthless, and previously written off as bad debt at the time that the distributor, supplier, or permissive supplier held an active license..

(1) The claim for refund must be in writing, state the fuel type (gasoline or diesel), state the beginning and ending date of sales on which the bad debt is claimed, the number of gallons, and the dollar amount of bad debts. The licensed distributor, supplier, or permissive supplier must establish the bad debt amount by providing information on the form required by the comptroller. Required information includes but is not limited to the following:

(A) the date of sale or invoice date;

(B) invoice fuel amount, and invoice fuel tax amount;

(C) the name and address of the purchaser, and if applicable, the licensed number of the purchaser;

(D) all payments or credits applied to the account of the purchaser; and

(E) uncollected amounts in the purchaser's account that were written off as bad debt in the distributor's, supplier's, or permissive supplier's records, including the number of gallons of fuel represented by the motor fuel portion of the bad debt.

(2) All payments and credits made by the purchaser must be applied to the purchaser's account to determine the bad debt amount, and if the purchaser's account also contains purchases of goods other than motor fuel, then the payments and credits to that account should be applied ratably between motor fuel, including tax, and other goods sold to the purchaser. The comptroller will only allow a claim for refund of tax on the number of gallons represented by the motor fuel portion of the bad debt. The maximum amount of refund claimed cannot exceed the tax paid on the fuel sold on account that has been written off as a bad debt.

(3) A claim for refund of taxes based on a bad debt must be filed within four years from the date the account is entered in the distributor's, supplier's, or permissive supplier's books as a bad debt.

(c) Accelerated Credit. If a licensed supplier or permissive supplier reported and remitted taxes on a tax return for fuel sold on account to a purchaser who is licensed as a distributor or importer at the time of the transaction and who subsequently fails to pay the taxes to the seller, the licensed supplier or permissive supplier may take a credit against tax liability on a subsequent tax return if the licensed supplier or permissive supplier notifies the comptroller of the default within 60 days after the default occurs.

(1) The notification shall be provided in the form required by the comptroller, and credits may be taken beginning with the return for the reporting month in which the notification is made. When credits are taken on a return, the licensed supplier or permissive supplier must submit with that return information required by the comptroller.

(2) A licensed supplier or permissive supplier who fails to notify the comptroller of the default within the prescribed 60-day period cannot take a credit on a return, but may seek a refund of taxes based on bad debts subject to the requirements provided by subsection (b) of this section.

(3) All payments and credits made by the purchaser must be applied to the purchaser's account to determine that non-payment amount, and if the purchaser's account contains the purchase of goods or items other than motor fuel, then the payments and credits to that account should be applied ratably between motor fuel, including tax, and other goods or items sold to the purchaser. The comptroller will only allow a credit of tax on the number of gallons represented by the motor fuel portion of the unpaid amount. The maximum amount of credit taken cannot exceed the tax paid on the fuel sold on account that has been unpaid.

(4) If the notification of default was timely made to the comptroller, credits for taxes that were not collected from the licensed purchaser must be taken within four years from the date of default.

(5) A distributor, supplier, permissive supplier, or importer whose right to defer payment of tax to a supplier or permissive supplier has been suspended may seek reinstatement of the right to defer payment when all motor fuel tax liability has been satisfied and considered in good standing with the comptroller. The distributor, supplier, permissive supplier, or importer must request that the comptroller issue a notice of good standing for motor fuel taxes.

(d) Credit card sales. The refund for bad debts or credit for non-payment of taxes allowed under this section does not apply to sales of fuel that is delivered into the supply tank of a motor vehicle or motorboat when payment is made through the use and acceptance of a credit card. For purpose of this section, a credit card is defined as any card, plate, key, or like device by which credit is extended to and charged to the purchaser's account. Credit sales to commercial or agricultural customers at locations not open to the general public are eligible to the bad debt credit.

(e) A supplier, permissive supplier, or distributor who collects all or part of an account that was written off as a bad debt for which a refund was sought under subsection (b) of this section or who collects all or part of the unpaid tax after a credit was taken under subsection (c) of this section, must report and remit the collected amount on the return that is due for the reporting period in which the bad debt was originally claimed. The comptroller may assess a deficiency, including 10% penalty at the rate provided by Tax Code, §111.060, if the amount recovered is not reported and tax is not paid to the state during the month in which the recovery is made. Interest will accrue from the date the credit was taken.

(f) If the comptroller determines that a taxpayer obtained a refund from the comptroller or took a credit on a return when he knew or should reasonably have known that the account or tax was collectible, the comptroller may issue a deficiency for the tax plus 10% penalty and interest imposed from the date the refund was granted or the credit taken. In addition, other penalties provided by this section or by Tax Code, Chapters 111 or 162, may be imposed.

(g) The comptroller may issue a deficiency assessment for tax, plus penalty and interest applicable under Tax Code, Chapter 111, against the purchaser whose account was the subject of a refund for bad debt obtained or a credit claimed by a distributor, supplier, or permissive supplier.

(h) Criminal and civil penalties for issuing bad checks.

(1) A person commits an offense if he issues a check to a licensed distributor, licensed supplier, or permissive supplier for the payment of fuel knowing that his account with the bank on which the check is drawn has insufficient funds and if the payment is for an obligation that includes tax imposed by Tax Code, Chapter 162, that is required to be collected by the licensed distributor or licensed supplier. The offense is a Class C misdemeanor.

(2) If a licensed distributor, licensed supplier, or permissive supplier receives an insufficient fund check causing a refund to be sought or a credit taken in accordance with the provisions in this section, the licensed distributor or licensed supplier may notify the comptroller of the receipt of the insufficient fund check. When making the notification, a photocopy of both sides of the returned check should be furnished.

(3) A person who issues an insufficient fund check to a licensed distributor, licensed supplier, or permissive supplier for payment of an obligation that includes tax imposed by Tax Code, Chapter 162, that is required to be collected by the licensed distributor, licensed supplier, or permissive supplier may be assessed a penalty equal to 100% of the total amount of tax not paid to the licensed distributor, licensed supplier, or permissive supplier. This penalty is in addition to any penalties, interest, and collection actions authorized by the Tax Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2005.

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Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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34 TAC §3.444

The Comptroller of Public Accounts proposes new §3.444, concerning temperature adjustment conversion table and metering devices. The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides the method to be used to temperature adjust a volume of gasoline or diesel fuel to 60 degrees Fahrenheit and describes the frequency and methods required to test and maintain the accuracy of meters and thermometers used to measure the temperature of gasoline and diesel fuel.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas, 78711.

The new rule is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code. Title 2.

The proposed rule implements Tax Code, §162.103 and §162.202.

§3.444. Temperature Adjustment Conversion Table and Metering Devices (Tax Code, §162.103 and §162.202).

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.

(b) Temperature adjustment method. For the purpose of conversion of actual gasoline and diesel fuel volume to equivalent volume of 60 degrees Fahrenheit, Table 6B of revised ASTM-API-IP Petroleum Measurement Tables may be used in lieu of any conversion table which the comptroller may issue.

(c) Testing and accuracy of meters and thermometers or other devices designed to accurately measure the temperature of fuel. Meters must be tested each 90 days or after 10 million gallons through-put, whichever occurs first. The accuracy of any meter being used must be maintained within 1% of correct volume during all loading or unloading operations. The tests of meters shall be determined by the methods provided by the American Society of Mechanical Engineers- American Petroleum Institute for the Installation, Proving and Operation of Meters in Liquid Hydrocarbon Service. Thermometers or other devices designed to accurately measure the temperature of fuel must be tested each 90 days and must conform to standards set by the American Society of Mechanical Engineers-American Petroleum Institute or National Bureau of Standards.

(d) Records. A record of all tests must be maintained and open for examination by the comptroller for a period of four years.

(e) Posting of results. The results of the most recent tests on all meters and thermometers or temperature measuring devices being used must be posted in a conspicuous place at each terminal where the tests are required.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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34 TAC §3.446

The Comptroller of Public Accounts proposes new §3.446, concerning electronic filing of reports, civil penalties, and deferred tax payments. The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides requirements for electronic filing of reports and schedules by licensed suppliers, permissive suppliers, distributors, importers, exporters, blenders, motor fuel transporters, and terminal operators, conditions under which a civil penal may be assessed for failure to file reports or failure to file reports electronically when required to do so, and deferred tax payments to licensed suppliers and permissive suppliers by licensed suppliers, permissive suppliers, distributors and importers.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new rule is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Tax Code, Title 2.

The amendment implements Tax Code, §§162.114, 162.116, 162.118, 162.119, 162.120, 162.121, 162.122, 162.123, 162.215, 162.217, 162.219, 162.220, 162.221, 162.222, 162.223, 162.224, and 162.402.

§3.446. Electronic Filing of Reports, Civil Penalties, and Deferred Tax Payments. (Tax Code, §§162,114, 162.116, 162.118, 162.119, 162.120, 162.121, 162.122, 162.123, 162.215, 162.217, 162.219, 162.220, 162.221, 162.222, 162.223, 162.224, and 162.402).

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.

(b) Electronic filing of reports and schedules.

(1) The comptroller may require a supplier, permissive supplier, distributor, importer, exporter, blender, or motor fuel transporter to file reports and schedules by means of electronic transmission under the following circumstances:

(A) the combined total number of gallons of gasoline and diesel fuel that a licensed supplier, permissive supplier, distributor, importer, exporter, or blender receives during the preceding 12 months exceeds five million gallons, or the total number of transactions that a licensed supplier, permissive supplier, distributor, importer, exporter, or blender reports on the monthly report schedules exceeds 100 transactions each month for three consecutive months on an individual license basis; or

(B) the total number of transactions that a motor fuel transporter reports on the quarterly report schedules exceeds 100 transactions.

(2) For the purpose of this section, one transaction means a single purchase, sale, import, or export of gasoline or diesel fuel, or the summary of multiple purchases, sales, imports, or exports of gasoline or diesel fuel during a reporting period, when the seller, purchaser, fuel type, motor fuel transporter, origin state or country, and destination state or country are the same.

(3) The taxpayer or its authorized agent shall enter into a written agreement with the comptroller to permit electronic filing of reports and schedules. The signature of the taxpayer or its authorized agent on the written agreement into which the parties enter for this purpose shall be deemed to appear on each report filed electronically.

(4) Electronic transmission of each report and schedule shall be made in a format that the comptroller approves and that is compatible with the comptroller's equipment and facilities.

(5) The comptroller shall notify the taxpayers to whom this subsection applies no less than 90 days before the taxpayer is required to begin filing its reports and schedules electronically.

(6) Suppliers, permissive suppliers, distributors, importers, exporter, blenders, and motor fuel transporters who are required to file reports and supplements electronically, but are unable to do so, may request a waiver from the comptroller.

(7) The license of a supplier, permissive supplier, distributor, importer, exporter, blender, or motor fuel transporter who is required to file electronically may be suspended if the supplier, permissive supplier, distributor, importer, exporter, blender, or motor fuel transporter fails to file reports and schedules by means of electronic transmission in an approved format, after being notified of such requirement.

(8) A terminal operator must file reports and schedules electronically.

(c) Civil penalty.

(1) A motor fuel transporter who is required to file reports and schedules and who fails to do so, after being notified of such requirement, may be assessed a penalty not to exceed $200 for each report period and $25 for each reportable transaction. Each calendar quarter that a motor fuel transporter fails to file a report with the comptroller is a separate violation. The comptroller will send notice to the motor fuel transporter about the assessment of the penalty. The motor fuel transporter may request a redetermination under the terms of §§1.1-1.42 of this title (relating to Rules of Practice and Procedure). An oral hearing at the office of the Comptroller of Public Accounts in Austin, Texas, may be requested. The standard of proof in an administrative hearing pursuant to this section is by a preponderance of the evidence, unless otherwise provided by statute.

(2) A motor fuel transporter or terminal operator who is required to file reports and schedules electronically and who fails to do so in an approved format, after being notified of such requirement, may be assessed a penalty not to exceed $200 for each report period and $25 for each reportable transaction. The comptroller will send notice to the motor fuel transporter or terminal operator about the assessment of the penalty. The motor fuel transporter or terminal operator may request a redetermination under the terms of §§1.1-1.42 of this title (relating to Rules of Practice and Procedure). An oral hearing at the office of the Comptroller of Public Accounts in Austin, Texas, may be requested. The standard of proof in an administrative hearing pursuant to this section is by a preponderance of the evidence, unless otherwise provided by statute.

(d) Deferred tax payments.

(1) A licensed supplier, permissive supplier, distributor, or importer ordering a withdrawal of motor fuel at a terminal rack may elect to defer the payment of taxes to a supplier or permissive supplier until two days before the supplier or permissive supplier is required to remit the tax to the state. If two days before the report due date falls on a weekend or banking holiday, then the payment to the supplier or permissive supplier is to be made on the last business day prior to the weekend or banking holiday. For example, if the due date falls on a Tuesday the 25th, then the supplier or permissive supplier may draft the account on Friday the 21st.

(2) A supplier, a permissive supplier, or its representative shall give at least a two day notice by electronic means of the amount to be drafted from the account of the supplier, permissive supplier, distributor, or importer. If two days before the date the bank account is to be drafted falls on a weekend or banking holiday, then the notice to the supplier, permissive supplier, distributor or importer is to be made on the last business day prior to the weekend or banking holiday. For example, if the due date falls on a Tuesday the 25th, then the supplier or permissive supplier must give notice on Wednesday the 19th.

(3) The supplier, permissive supplier, distributor or importer shall pay the taxes to the supplier or permissive supplier by electronic funds transfer.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2005.

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Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
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SUBCHAPTER W. AMUSEMENT MACHINE REGULATION AND TAX

34 TAC §3.601

The Comptroller of Public Accounts proposes an amendment to §3.601, concerning definitions, changes in ownership, gross receipts regulations, and record keeping requirements. This section is amended to provide notification and record keeping requirements.

Subsection (b)(2) is amended to require general business license holders to file written notification of change of ownership of a machine, as required for registration certificate holders. Subsection (d)(1)(F) is amended to require that directions to a location included in a licensee's records when location address is a rural route and box number. Subsection (d)(1)(G) is amended to require that the notification of change of machine ownership is included in a licensee's records.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the amendment would have no fiscal impact on the state or on units of local government. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under Tax Code, §111.002 and §111.0022, which provides the Comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Occupations Code, §2153.201 and §2153.202.

§3.601. Definitions, Changes in Ownership, Gross Receipts Regulations, and Record Keeping Requirements.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Gross receipts--The total sum of money derived from the operation of a coin-operated machine which vends music, skill, or pleasure.

(2) Issue a license--A license issued on an applicant's original application or a license issued on an application for renewal.

(3) License--A general business license, import license, or repair license issued by the comptroller.

(4) Machine or amusement machine--All machines that[~~which~~] vend or dispense music, or are operated for skill or pleasure. A machine in an independent cabinet with a separate central control mechanism shall be considered a separate machine in regard to occupation tax requirements. A machine that[~~which~~] is no longer functional, and that has been permanently taken out of service, will not be considered to be a coin-operated machine operated for music, skill, or pleasure. In this context permanently taken out of service means that it is no longer financially practical to operate the machine and the machine[~~it~~] will be used only for parts.

(5) Machines designed exclusively for children--Machines that[~~which~~] can only be used for skill or pleasure by a child under 12 years of age.

(6) Owner of a registration certificate--An owner who possesses a valid registration certificate issued by the comptroller.

(7) Permit--The decal issued by the comptroller to an owner of a coin-operated machine evidencing the payment of the occupation tax.

(8) Person--Any natural person, association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, [~~servant~~] or employee of any of them.

(9) Video game--An electronic mechanism played for skill or pleasure by means of images on a screen. Each cabinet that[~~which~~] holds a game of skill or pleasure by means of images on a screen constitutes an independent operation subject to the occupation tax.

(b) Changes in ownership. Changes in ownership are reported in the following manner:

(1) if any partner of a partnership; trustee of a trust; receiver of a receivership; officer or director of a corporation; shareholder owning 10% or more of the outstanding shares of a corporation; individual applicant or licensee; officer, director or member of an association or other entity changes since[~~from the date~~] the last ownership information was filed with the comptroller, written notification of the ownership change must be filed with the comptroller within 10 days of the ownership change;

(2) if any information on an application changes since[~~from the date~~] the last application was filed or any information changes since[~~from the last date~~] the comptroller was notified of an information change, including the change of ownership of any permitted machine owned by the registration certificate holderor general business license holder, written notification of the change must be filed with the comptroller within 10 days of the change;

(3) if the owners of a corporation change, a written notification of the change must be filed with the comptroller within 10 days of the change. The business entity may continue to operate under its existing license or registration certificate;

(4) if partners in a partnership change or a business entity dissolves, the successor in interest must request a temporary extension of a license or file an application for a new license. A successor in interest is one who assumes the ownership interest of a business entity but does not include the purchaser of the assets of the entity. To request a temporary extension of a license, the successor in interest must file with the comptroller a certification by the county judge of the county in which the business is located that the person requesting the extension

is successor in interest. In the case of a sole proprietor, only when there is a successor in interest as the result of the death of the licensee can there be an extension of a license. The death of this licensee must be certified by a county judge of the county in which the business is located, or by the judge of the probate court in the county in which the estate of the deceased licensee is probated. In all other instances, the entity assuming a sole proprietor's interest must obtain a license. At the time of renewal of a license that has been extended, the successor in interest must file an original license application; and

(5) if a sole proprietor owner of a registration certificate dies, the successor in interest must notify the comptroller in writing. The successor in interest may then continue to use the registration certificate until its expiration at which time the successor in interest must file an original application for a registration certificate. In all other instances, the successor in interest of the owner of a registration certificate shall file an application for a new registration certificate.

(c) Gross receipts regulations. The following regulations apply to gross receipts:

(1) distribution of gross receipts from amusement machines. The term "gross receipts from an amusement machine" is defined to be the total sum of money derived from the operation of a coin-operated machine that[~~which~~] vends music, skill, or pleasure. No licensee shall enter into a contract or offer to contract with a bailee or lessee (location operator) of an amusement machine to compensate the bailee or lessee in excess of 50% of the gross receipts from an amusement machine, except that a licensee may refund a bailee or lessee of an amusement machine all money accepted by an amusement machine due to its malfunction. Before any money may be refunded under this exception, the name, address, and telephone number of the person who deposited money in the malfunctioning machine together with the sum of money deposited by him must be supplied to the licensee;

(2) collection records of distribution of gross receipts from an amusement machine. Complete and separate records showing the distribution of the gross receipts for each location that an amusement machine is operated shall be made on each and every occasion the licensee or one of his employees collects money from the cash box of an amusement machine placed in operation. These records showing the distribution of the gross receipts for each location that an amusement machine is operated shall be kept by a licensee at his[~~their~~] designated address. These records shall be kept by the licensee for a period of two years; and

(3) entry to cash boxes of amusement machines. No licensee shall allow the bailee or lessee of an amusement machine to open or gain entry in any manner to the cash box except a coin-operated machine equipped with an income meter that totals or computes the sum of money deposited in the machine in dollars and cents. All keys to the cash box of a coin-operated machine other than a machine expressly exempt by this rule shall at all times remain in the possession of the licensee or his employees.

(d) Record keeping requirements. The following requirements are imposed on record keeping:

(1) in addition to all other record keeping requirements, each licensee shall maintain at the designated address, for inspection at all times by the comptroller, a record of each and every amusement machine purchased, received, possessed, controlled, handled, exhibited, or operated by him in this state as long as the licensee owns the machine and for two years after the date the licensee ceases to own the machine. Under this section the following information shall be shown in the licensee's records:

(A) the full name and address of the owner of each and every machine, or if other than an individual, the principal officers or members thereof and their addresses;

(B) the date each machine was acquired or received in Texas;

(C) the make, type, and serial number of each and every machine;

(D) the date each machine was first placed in operation;

(E) the date of the first and most recent registration of each machine;

(F) the location or locations of each machine including county, city, and street, or directions if location is a[~~and/or~~] rural route and box number;

(G) every change in ownership of each machineincluding written notification as described in subsection (b)(2) of this section;

(H) the distribution of the gross receipts for each location that a machine is located and the receipts from each machine;

(I) the date each machine was taken out of operation, the reason the machine was taken out of operation, and the location of a machine taken out of operation or the description of the final disposition of a machine; and

(J) all contracts made with location owners;

(2) depreciation schedules and federal income tax returns must be maintained for four years to be in compliance with the sales tax statutes; and

(3) purchase invoices for the machines must be maintained for four years to be in compliance with the sales tax statutes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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34 TAC §3.602

The Comptroller of Public Accounts proposes an amendment to §3.602, concerning licenses and certificates, renewals and due dates, occupation tax permits and exemptions. This section is amended to update incorrect statutory references. The legislature changed the penalty for operating without a license or registration certificate. The legislature codified the Coin- Operated Machine law as Occupations Code, Chapter 2153. Additional amendments are made to provide notification requirements.

Subsection (a)(4) is amended to require general business license holders to file written notification of change of ownership of a machine, as is required for registration certificate holders. Subsection (b)(1) is amended to correct the statutory penalty to a Class A misdemeanor. Subsection (c)(1) is amended

to correct the statutory penalty to a Class A misdemeanor. Subsection (d)(4) is amended to require a written notification of change of machine ownership before a tax permit is assigned. Subsection (d)(7) is amended to update statutory reference to Occupations Code, §2153.005.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the amendment would have no fiscal impact on the state or on units of local government.. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Occupations Code, §§2153.005, 2153.051, 2153.202, 2153.356 and 2153.404.

§3.602. Licenses and Certificates, Renewals and Due Dates, Occupation Tax Permits and Exemptions.

(a) Licenses and registration certificates.

(1) Annual general business, import, and/or repair license fees, and registration certificate fees. Annual license and registration certificate fees are payable in advance and cannot be prorated quarterly.

(2) Age requirement for issuance of a license. No natural person shall be issued a license by the comptroller for the operation of coin-operated machines unless at the time the license is issued the applicant is more than[~~above the age of~~] 18 years of age.

(3) Information requirement for issuance of a license or registration certificate. An applicant for a license or registration certificate must provide[~~complete~~] all information required by[~~asked for in the~~] comptroller's application before a license or registration certificate will be issued or renewed.

(4) General business license and registration[~~Registration~~] certificate notification requirement. A general business license holder must notify the comptroller in writing within 10 days of any change in ownership of a machine. A registration certificate holder must notify the comptroller in writing of any change in ownership of a machine and each time the location of a machine is changed within 10 days of the change.

(5) Occasional sale exemption for registration certificate holder. A registration certificate holder may make one or two sales of coin-operated machines during any 12-month period if the certificate holder does not hold out as engaging (or does not habitually engage) in the business of selling coin-operated machines without losing the licensing exemption. Before the third sale of a coin-operated machine in a 12-month period by a certificate holder not previously in the business of selling, leasing, or renting coin-operated machines, a general business or import license must be obtained. The transfer of title or possession of more than one machine in a single transaction will constitute one sale.

(b) Annual general business, import and repair license renewals, and annual occupation tax.

(1) License renewal applications are due November 30. License renewal applications will not be considered complete for processing unless the tax due and[~~as well as~~] the license fee are[~~is~~] remitted. Complete license renewal applications filed after the due date may result in the renewal license being issued after December 31, the expiration date of the existing license. In such a case a person may not operate amusement machines after the expiration date until the renewal license is issued. A person who operates amusement machines without a license or with an expired license is guilty of a Class A[~~B~~] misdemeanor.

(2) An applicant who properly completes the application and remits all fees and taxes with it by the due date may continue to operate amusement machines after the expiration date if the applicant's license renewal has not been issued unless the applicant is notified by the comptroller prior to the license expiration date of a problem with the license renewal.

(c) Annual registration certificate renewals and annual occupation tax.

(1) Registration certificate renewal applications are due November 30. Registration certificate renewal applications will not be processed unless the tax due and[~~as well as~~] the registration fee are[~~is~~] remitted. Registration certificate renewal applications filed after the due date may result in the renewal registration certificate being issued after December 31, the expiration date of the existing registration certificate. In such a case, a person may not operate amusement machines after the expiration date until the renewal certificate is issued. A person who operates amusement machines without a registration certificate or with an expired registration certificate is guilty of a Class A[~~B~~] misdemeanor.

(2) An applicant who properly completes the application and remits all fees and taxes with it by the due date may continue to operate amusement machines after the expiration date even if the registration certificate renewal has not been issued unless the applicant is notified by the comptroller prior to the registration certificate expiration date of a problem with the registration certificate renewal.

(3) License and registration certificate fees may not be prorated quarterly and the annual license or registration fee must be submitted with an application.

(d) Occupation tax permits.

(1) Occupation tax. Each amusement machine is subject to the occupation tax at the time a person exhibits, displays, or permits a machine to be exhibited or displayed in this state with the exception of annual renewals. The occupation tax for annual renewals for each machine exhibited or displayed or permitted to be exhibited or displayed in this state is due November 30 of each year.

(2) Rate schedule. The following rate schedule will be applicable to machines first exhibited or displayed or permitted to be exhibited or displayed in this state in any quarter of the calendar year:
Figure: 34 TAC §3.602(d)(2) (No change.)

(3) Replacement of lost, stolen, or destroyed valid Occupation Tax Permits. The comptroller shall provide a duplicate permit if a valid permit has been lost, stolen, or destroyed. The fee for each duplicate permit is $5.00. If a tax permit is lost, stolen, or destroyed, a written statement must be submitted explaining the circumstances by which the tax permit was lost, stolen, or destroyed, and including the

number of the lost, stolen, or destroyed permit, before a replacement permit can be issued. A permit for which a duplicate permit has been issued is void.

(4) Assignment of tax permits. Each coin-operated machine operated for music, skill, or pleasure shall be registered with the comptroller by make, model, and serial number. A tax permit issued by the comptroller shall be affixed to each registered machine. Each coin-operated machine shall have a serial number and the name and telephone number of the owner of said machine must be[~~that is~~] clearly visible on the outside surface of the machine cabinet. If a coin- operated machine is not manufactured with a serial number, a licensee or registration certificate holder shall assign a serial number to the machine and either stamp or engrave the assigned number on the machine cabinet. If all these requirements have been met, a tax permit may be assigned by submitting written notice, as described in subsection (a)(4) of this section, to the comptroller within 10 days of[~~upon~~] the transfer of title or possession of a machine.

(5) Attachment of tax permits. Tax permits shall be securely affixed to any permanent surface on a machine in such a manner that the tax permits may be clearly seen by the public and cannot be removed without the continued application of steam and water. Tax permits shall not be attached to a machine that[~~which~~] has not been registered with the comptroller.

(6) Issuance of extra tax permits. The comptroller[~~No tax permits~~] will issue permits only for[~~be issued except for~~] machines that are exhibited or displayed on location. The taxpayer shall not stockpile permits nor shall any permits be affixed to unregistered machines.

(7) Exemptions. In order to establish that an organization is exempt from the license requirements pursuant to the Coin-Operated Machines[~~Services Law,~~] Occupations Code, §2153.005[~~Texas Civil Statutes, Article 8817, §8~~], the organization[~~it~~] must do the following:

(A) submit a written statement to the comptroller setting out in detail the nature of the activities conducted or to be conducted, a copy of the articles of incorporation if the organization is a corporation, a copy of the bylaws, a copy of any applicable trust agreement or a copy of its constitution, and a copy of any letter granting exemption from the Internal Revenue Service; and

(B) furnish any additional information requested by the comptroller including, but not limited to, documentation showing all services performed by the organization and all income, assets, and liabilities of the organization.

(8) Written notice. After a review of the material, the comptroller will inform the organization in writing if it qualifies for an exemption.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry
Chief Deputy General Counsel
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SUBCHAPTER AA. AUTOMOTIVE OIL SALES FEE

34 TAC §3.701

The Comptroller of Public Accounts proposes an amendment to §3.701, concerning reporting requirements. The proposed amendment corrects the name of the Texas Natural Resource Conservation Commission (TNRCC) by changing the name to the Texas Commission on Environmental Quality (TCEQ).

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding fee responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, and 111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements the Health and Safety Code, Section 371.062.

§3.701. Reporting Requirements.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Automotive oil--Any lubricating oils that can be used in an internal combustion engine, crankcase, transmission, gear box, or differential for an automobile, bus, or truck.

(A) Automotive oil includes natural or synthetic engine oil, transmission fluid, and gear oil of any type that can be used, according to the labeling, in the engine of an automobile, truck, or bus, and includes oil that is not labeled specifically for this use, but is suitable for this use according to generally accepted industry specifications.

(B) Automotive oil does not include:

(i) chain oil;

(ii) turbine oil;

(iii) waste oil;

(iv) outboard motor oil;

(v) refrigerant oil;

(vi) cotton spray oil;

(vii) form oil; and

(viii) oil additives as they exist prior to blending.

(2) Distributor--A person who maintains a distribution center or warehouse in this state and annually sells more than 25,000 gallons of automotive oil. A distributor must obtain a permit from the comptroller's office.

(A) The distributor's permit is valid until the permit is surrendered by the holder or canceled by the comptroller.

(B) Oil manufacturers that meet the distributor definition, and are currently liable for paying this fee to the comptroller, will not be required to obtain a distributor's permit.

(3) Do-it-yourselfer used oil collection center--A site or facility registered with the Texas Commission on Environmental Quality (TCEQ)[~~Natural Resource Conservation Commission (TNRCC)~~] that accepts or aggregates and stores used oil collected only from household do-it-yourselfers.

(4) First sale--The first actual sale of automotive oil delivered to a location in this state and sold to a purchaser who is not an automotive oil manufacturer or distributor. First sale does not include the sale of automotive oil exported from this state to a location outside this state for the purpose of sale or use outside this state, to the United States Government, or for resale to or use by vessels engaged exclusively in foreign or interstate commerce. A sale to a subsequent purchaser who maintains a do-it-yourselfer used oil collection center or used oil collection center registered by the TCEQ[~~TNRCC~~] is not considered a first sale.

(5) Importer--Any person who imports, or causes to be imported, automotive oil into this state for sale, use, or consumption. For purposes of this subsection first sale includes the use or consumption of automotive oil in this state.

(6) Oil manufacturer--Any person or entity that formulates automotive oil and packages, distributes, or sells that automotive oil. Oil manufacturer includes any person packaging or repackaging automotive oil.

(7) Out-of-state seller--A person or entity engaged in business in this state as defined in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

(8) Used oil collection center--A site or facility that is registered by the TCEQ[~~TNRCC~~] to manage used oil collected from used oil generators or household do-it-yourselfers.

(b) Exemptions.

(1) Sales of automotive oil to an oil manufacturer or distributor are exempt from the automotive oil fee.

(2) Sales of automotive oil to a subsequent purchaser who maintains a do-it-yourselfer used oil collection center or used oil collection center registered by the TCEQ[~~TNRCC~~] are exempt from this fee. A copy of its current TCEQ[~~TNRCC~~] registration must be provided by the purchaser as documentation for an exempt purchase.

(3) Sales of automotive oil to be used by vessels engaged exclusively in foreign or interstate commerce are exempted from this fee.

(4) Sales of automotive oil to the United States Government are exempt from this fee.

(5) Sales of automotive oil delivered to a location in another state for the purpose of sale or use outside the State of Texas are exempt from this fee if shipment is made by means of:

(A) the facilities of the seller;

(B) delivery by the seller to a carrier for shipment to a consignee at a point outside this state;

(C) delivery by the seller to a forwarding agent for shipment to a location in another state of the United States or its territories or possessions; or

(D) the facilities of the purchaser if proof of delivery outside of Texas is provided.

(6) Exports beyond the territorial limits of the United States are exempt from this fee if proof of export can be shown by:

(A) a copy of the bill of lading issued by a licensed and certificated carrier showing the seller as consignor, the buyer or purchaser as consignee, and a delivery point outside the territorial limits of the United States;

(B) documentation provided by a licensed United States custom broker certifying that delivery was made to a point outside the territorial limits of the United States;

(C) formal entry documents from the country of destination showing that the automotive oil was imported into a country other than the United States. For the country of Mexico, the formal entry document would be the pedimento de importaciones document with a computerized number issued by Mexican customs officials; or

(D) a copy of the original airway, ocean, or railroad bill of lading issued by a licensed and certificated carrier which describes the items being exported and a copy of the freight forwarder's receipt if the freight forwarder takes possession of the property in Texas.

(c) Credit or refund of fee paid. A purchaser of automotive oil who makes an exempt sale or use of the oil as provided in this section may obtain a refund or credit from the supplier for the automotive oil fee previously paid to the supplier. The purchaser requesting a refund or credit from its supplier must furnish documentation that verifies the exemption. An oil manufacturer, or distributor, or importer who makes an exempt sale or use of the oil as provided in this section may obtain a refund or credit from the comptroller for the automotive oil fee previously paid to the comptroller. The amount of refund that may be claimed may equal but not exceed the amount of the fee paid on the automotive oil. See Tax Code, §§111.104-111.107.

(d) Report and payment required.

(1) Each automotive oil manufacturer, importer, or distributor shall file a report with the comptroller stating the number of quarts of automotive oil sold, imported, used, or consumed in this state.

(2) An automotive oil manufacturer or distributor who makes a first sale or use of automotive oil in Texas is liable for the fee.

(3) An automotive oil importer who imports or causes to be imported automotive oil into Texas for sale, use, or consumption is liable for the fee at the time the oil is received by the importer.

(e) Amount of fee.

(1) Except as provided in paragraph (2) of this subsection, the rate of the fee shall be $.02 per quart or $.08 per gallon of automotive oil.

(2) The TCEQ[~~TNRCC~~] may adjust the fee rate to meet the expenditure requirements of the used oil recycling program, and to maintain an appropriate fund balance. The fee rate may not exceed $.05 per quart or $.20 per gallon.

(3) On or before September 1 of each year, the TCEQ[~~TNRCC~~] and the comptroller shall jointly issue notice of the effective fee rate for the next fiscal year.

(4) Effective September 1, 1997, the rate of fee shall be $.01 per quart or $.04 per gallon of automotive oil. The rate shall be fixed at this level and paragraphs (1), (2), and (3) of this subsection are superseded.

(f) Due date of report and payment.

(1) The automotive oil fee report and payment are due no later than the 25th day of the month following the end of each calendar quarter in which the liability for the fee is incurred.

(2) An automotive oil manufacturer, importer or distributor of automotive oil must file a quarterly report even if there is no fee to report.

(g) Discount. A person required to pay the fee may retain 1.0% of the amount of the fees due from each quarterly payment as reimbursement for administrative costs.

(h) Penalty. Penalties due on delinquent fees and reports shall be imposed as provided by [~~the~~]Tax Code, §111.061.

(i) Interest. Interest due on delinquent fees shall be imposed as provided by [~~the~~]Tax Code, §111.060.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

TRD-200500318
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 475-0387

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SUBCHAPTER GG. INSURANCE TAX

34 TAC §3.809

The Comptroller of Public Accounts proposes an amendment to §3.809, concerning due dates, penalty and interest, and overpayments. The amendment specifically addresses the penalty and interest applicable to late payments and underpayments to conform with changes in interest calculation in Tax Code, Title 2.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the rule would benefit the public by providing information concerning tax responsibilities and conforming the rule language to statutory language. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Insurance Code, Article 4.10, §6(b), Article 4.11, §13, and Article 9.59, §3(b), and Tax Code, Title 2, Subtitles A and B.

§3.809. Due Dates, Penalty and Interest, and Overpayments.

(a) Premium and Maintenance Tax Return due date. The premium tax and maintenance tax return for each taxable year that ends[~~ending~~] the preceding December 31st shall be filed and the total amount of tax due shall be paid on or before the 1st day of March of each year or if a company is required to file an annual statement after March 1, the premium tax and maintenance tax report is required to be filed at that time.

(b) Premium tax prepayments. All Texas licensed insurers with a net tax liability for the previous calendar year in excess of $1000 must prepay premium tax semiannually.

(1) A semiannual prepayment of premium tax must be made on March 1, or at the same time that the annual statement is required to be filed, and onAugust 1[~~by all insurers with a net tax liability for the previous calendar year in excess of $1,000~~]. Each[~~The~~] prepayment shall equal the lesser of one-half of the net[~~total~~] premium tax due[~~paid~~] for the previous calendar year, or one-half of the current year's net premium tax due[~~liability~~]. If no premium tax was due[~~paid~~] during the previous calendar year, the prepayment will be based on the net tax that[~~which~~] would be owed on the aggregate of premiums[~~premium receipts~~] for the two previous[~~preceding~~] calendar quarters based on the minimum tax rate specified by law. [~~If the premium tax liability for the previous year was between $.01 and $1,000, no prepayment is due.~~]

(2) The amount due is the lesser of the net[~~total annual~~] premium tax due[~~liability~~] from the previous year, or the actual net premium tax due[~~tax liability~~] for the current year multiplied by 50%.

(3) Because examination expense credits, valuation fee credits, and guaranty association assessment credits have been factored into the net premium tax due line item on the annual tax report, the prepayment amount should not be adjusted to reflect these credits.

(c) Penalty and interest. Late payment or underpayment of any insurance tax, assessment, or fee will result in the application of penalty and interest[~~Any taxes due prior to September 1, 1993, including prepayments, are subject to the Insurance Code in effect at that time. Therefore, any assessments issued by the comptroller for additional taxes which were originally due prior to September 1, 1993, fall under the penalty and interest provisions contained within the Insurance Code, Article 4.13 and Article 4.14, in effect through August 31, 1993. Refer to paragraph (1) of this subsection. The comptroller does not have the authority to waive penalty or interest on assessments made for periods prior to September 1, 1993~~].

(1) Late payment. Failure to file and pay taxes, assessments, and fees by the due date as provided under the Insurance Code will subject a taxpayer to penalty and interest under Tax Code, Title 2, Subtitles A and B.

[~~(1) Prepayments and tax returns due prior to September 1, 1993.~~]

[~~(A) Late payment.~~]

[~~(i)~~] ~~Penalty. A penalty equal to 5.0% of the amount of taxes due shall be assessed for each month or portion of a month for which such payment is late. The penalty shall not exceed 20%.~~]

[(ii) ~~Interest. Interest shall accrue at an annual rate of 9.0% from the due date until the date paid.]~~

~~[(B) Underpayment.]~~

[(i) ~~Penalty. Insurance carriers failing to satisfy the provisions of subsection (a) or (b)(1) of this section will be assessed penalty, as prescribed in subparagraph (A)(i) of this paragraph, on the difference between the amount of quarterly prepayment tax liability actually paid and the amount due.]~~

[(ii) ~~Interest. Insurance carriers failing to satisfy the provisions of subsection (a) or (b)(1) of this section will be assessed interest, as prescribed in subparagraph (A)(ii) of this paragraph, on the difference between the amount of quarterly prepayment tax liability actually paid and the amount due.]~~

(2) Underpayment. Failure to file and pay taxes, assessments, and fees, as provided under Insurance Code, Article 4.10, §6(b), Article 4.11, §13(a), and Article 9.59, §3(b), will subject a taxpayer to penalty and interest under Tax Code, Title 2, Subtitles A and B, on the difference between the amount of semiannual prepayment tax actually paid and the net premium tax due.

~~[(2) Prepayments and tax returns due on or after September 1, 1993.]~~

~~[(A) Late payment.]~~

[(i) ~~A penalty of 5.0% will be assessed on all payments which are received 1-30 days after the due date. An additional 5.0% penalty will be assessed on tax payments received more than 30 days after the due date.]~~

[(ii) ~~Interest will be assessed on payments received more than 60 days after the due date at the rate of 12% per annum. Interest will begin to accrue on the 61st day from the due date and continue through date of the tax payment. The interest will be in addition to the 10% penalty assessed in clause (i) of this subparagraph.]~~

~~[(B) Underpayment.]~~

[(i) ~~Penalty. Insurance carriers failing to satisfy the provisions of subsection (a) or (b)(2) of this section will be assessed penalty, as prescribed in subparagraph (A)(i) of this paragraph, on the difference between the amount of semiannual prepayment tax liability actually paid and the amount due.]~~

[(ii) ~~Interest. Insurance carriers failing to satisfy the provisions of subsection (a) or (b)(2) of this section will be assessed interest, as prescribed in subparagraph (A)(ii) of this paragraph, on the difference between the amount of semiannual prepayment tax liability actually paid and the amount due.]~~

(3) Penalty. A 5.0% penalty is due on the amount of any insurance tax, assessment, or fee that is not paid when due. If any of the taxes, assessments, or fees are not paid within 30 days after the due date, an additional 5.0% penalty is imposed on the amount that remains unpaid.

(4) Interest. Delinquent taxes accrue interest beginning 60 days after the due date. For example, if payment is made on the 61st day after the due date, one day's interest is due. For reports due on or after January 1, 2000, the annual rate of interest on delinquent taxes is the prime rate plus one percent, as published in the *Wall Street Journal*on the first day of each calendar year that is not a Saturday, Sunday, or legal holiday.

(d) Overpayment of tax liability. Commencing with the tax return due on March 1, 1995, if the sum of the semiannual prepayments exceeds the net premium tax due[~~actual tax due~~] as determined by the accurate and correct filing of the original or amended annual tax return, the overpayment will be automatically refunded or credited to the taxpayer unless the taxpayer notifies the comptroller in writing to apply the overpayment to another period or unless the taxpayer's account reflects an outstanding liability in any other tax collected by the comptroller. [~~The notification should be written on the face of the tax return.~~]

(e) Interest on refunds. Under Tax Code, Title 2, a refund granted for a report due on or after January 1, 2000, for an amount found to be erroneously paid, will include interest at the same variable interest rate charged on delinquent taxes. The applicable interest rate is 1.0% plus the prime rate as published in the *Wall Street Journal* on the first business day of each year. Interest accrues beginning the later of 60 days after the date of payment or the due date of the tax report. A refund for a report due before January 1, 2000 does not accrue interest. Interest does not accrue on a credit taken on a taxpayer's report.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

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Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

SUBCHAPTER KK. SCHOOL FUND BENEFIT FEE

34 TAC §3.1251

The Comptroller of Public Accounts proposes an amendment to §3.1251, concerning the school fund benefit fee. This section is amended to correct statutory references to Tax Code, Chapter 153, motor fuels tax license holders, and §3.173, relating to refunds on gasoline and diesel fuel tax. The 78th Legislature, Regular Session (2003), replaced Tax Code, Chapter 153, with Chapter 162.

Subsection (b) is amended to correct references to Tax Code, Chapter 162, and to motor fuels license holders under the new code. Subsection (d) is amended to correct reference to Tax Code, Chapter 162. Subsection (c)(5) is amended to correct reference to §3.432, relating to refunds of gasoline and diesel fuel tax.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding fee responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under Tax Code §111.002 and §111.0022, which provide the Comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the Comptroller administers under other law.

The amendment implements Tax Code, §162.204 and Transportation Code, Chapter 20, §20.002.

§3.1251. School Fund Benefit Fee.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commercial motor vehicle--A self-propelled vehicle used to transport passengers for compensation or hire between points in Texas on a fixed or scheduled route that:

(A) has a gross weight, registered weight, or gross weight rating of more than 26,000 pounds; or

(B) is designed to transport more than 15 passengers, including the driver.

(2) Fixed or scheduled route--Published routes between fixed points in Texas that are open for travel by the general public with intended times of departure and arrival at a terminal or other specified location. Fixed or scheduled route travel includes the distance from the Texas border to the first arrival point, the distance from the first arrival point to the last departure point, and the distance from the last departure point to the Texas border.

(3) Political subdivision--Any county, city, town, village, district, or other political subdivision of the state. For the purpose of this section, a political subdivision includes a person performing a contract to provide transportation services for any city, town, village, district, or other political subdivision of the state.

(b) Collection of tax on sales of diesel fuel. Diesel fuel suppliers, permissive suppliers, distributors [~~jobbers~~], and retail dealers must collect the tax imposed by [~~the~~] Tax Code, Chapter 162 [~~153~~], on sales of diesel fuel to any person qualifying for a tax refund under subsection (c) of this section.

(c) Refund of tax paid on diesel fuel used on fixed or scheduled routes.

(1) A person, other than a political subdivision, who owns, controls, operates, or manages a commercial motor vehicle and uses diesel-powered motor vehicles to transport passengers for compensation or hire between points in Texas on fixed or scheduled routes may file a claim for refund with the comptroller for state taxes paid on diesel fuel used exclusively in commercial motor vehicles while traveling fixed or scheduled routes.

(2) The amount of fuel subject to state motor fuels tax refund shall be computed by dividing the total miles traveled on fixed or scheduled routes by the vehicles' average mile-per-gallon.

(3) A claim for refund must be filed in the calendar month following the month in which the diesel fuel is used in a commercial motor vehicle.

(4) A claim for refund of tax paid on diesel fuel consumed while traveling fixed or scheduled routes may not be paid unless the motor vehicle operator has filed the required school fund benefit fee report.

(5) Tax paid on diesel fuel used to operate commercial motor vehicles on charter trips or other non-fixed or non-scheduled routes is not refundable, other than for refunds provided by §3.432 [~~§3.173~~] of this title (relating to Refunds of Gasoline and Diesel Fuel Tax).

(d) School fund benefit fee due. A fee is imposed under [~~the~~] Transportation Code, Chapter 20, §20.002 [~~20.002~~], on diesel fuel exempted from the motor fuels tax under [~~the~~] Tax Code, Chapter 162 [~~153~~], at a rate of $0.04875 per gallon.

(e) Due date of report and payment.

(1) The school fund benefit fee report and payment are due not later than the last day of the month following the calendar month in which liability for the fee is incurred, except as provided by paragraph (5) of this subsection.

(2) A commercial motor vehicle operator must file a monthly report even if there is no fee to report.

(3) Penalties due on delinquent fees and reports shall be imposed as provided by [~~the~~] Tax Code, §111.061.

(4) Interest on delinquent fees shall be imposed as provided by [~~the~~] Tax Code, §111.060.

(5) The due date for the September, October, and November, 1999, school fund benefit fee report and payment is extended to January 31, 2000. The report and payment for the period September 1, 1999, through November 30, 1999, are to be included with the December, 1999 report and payment.

(f) Records required. A commercial motor vehicle operator shall keep records showing:

(1) all fixed or scheduled routes;

(2) the date and number of miles traveled on fixed or scheduled routes in Texas;

(3) the date and number of miles traveled on charter trips and other non-fixed or non-scheduled routes in Texas;

(4) the number of gallons of diesel fuel on hand on the first day of each month;

(5) the number of gallons of diesel fuel purchased or received, showing the name of the seller and the date of each purchase;

(6) the date and number of gallons of diesel fuel delivered into the fuel supply tanks of commercial motor vehicles;

(7) the date and number of gallons delivered into the fuel supply tanks of other diesel powered motor vehicles.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

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Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 3. TEXAS HIGHWAY PATROL
SUBCHAPTER B. ENFORCEMENT ACTION

37 TAC §3.28

The Texas Department of Public Safety proposes an amendment to §3.28, concerning Citation Disposition Receipt Program. Amendment to the section is necessary in order to clarify the specific circumstances under which a Trooper may utilize the Citation Disposition Program.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the anticipated public benefit resulting from adoption of the section would be to allow a nonresident motorist the opportunity to waive immediate appearance before a magistrate by disposing of a fine through alternate methods, such as a money order, cashier's check, traveler's check or cash money. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Major David G. Baker, Texas Department of Public Safety, Texas Highway Patrol Division, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2116.

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

Texas Government Code, §411.004(3) is affected by this proposal.

§3.28. Citation Disposition Receipt Program.

(a) The citation disposition receipt procedure will [~~may~~] be used only in those instances where a violator is a nonresident motorist and is licensed in a state that is not a member of the Nonresident Violator Compact of 1977, [~~an immediate appearance before a magistrate is not required by statute~~] and when in the judgment of the arresting officer, a custody arrest is necessary to ensure [~~insure~~] the violator's appearance in court and the violator elects to waive his immediate appearance before a magistrate [~~by selecting this alternate method~~].

(b) Instruments to be accepted in payment of fines:

(1) money order;

(2) cashier's check;

(3) traveler's check; or

(4) cash money.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 14, 2005.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION, PLACEMENT, AND PROGRAM COMPLETION

The Texas Youth Commission (TYC) proposes the repeal of §§85.29, 85.33, 85.35, 85.39, 85.41, 85.43, 85.45, 85.51, 85.61, concerning placement planning and program completion. In each case, the rules proposed for repeal are proposed for re-adoption under new section numbers. The chapter name is also changing from Admission and Placement to Admission, Placement, and Program Completion.

TYC simultaneously proposes new §§85.31, 85.41, 85.45, 85.51, 85.55, 85.59, 85.61, 85.65, 85.69, 85.71, 85.75, 85.79, 85.85, 85.95. The new sections and subchapters are necessary in order to better organize information relating to program completion by offender type and age and placement upon transition or release.

The new sections are also proposed in order to revise existing agency rules relating to the procedures and eligibility criteria for program completion. Specifically, new §§85.45, 85.55, 85.59, 85.61, 85.65, and 85.69 will require that, in order to qualify for transition or release to a community placement, a youth must have no Category I rule violations during the period of time necessary to obtain required administrative approvals for the transition or release, and youth who are identified as having the highest priority for certain types of specialized treatment must complete assigned specialized treatment programs prior to transition or release. Additionally, §85.55 and §85.59 will establish limits on the amount of time administrators have to ensure that youth who have fulfilled program completion requirements are transitioned or released to community placements. Finally, in order to transfer custody to the Parole or Institutions Division of the Texas Department of Criminal Justice, new §85.69 will require that youth who were sentenced for capital murder committed before September 1, 2003, and who have not completed their minimum period of confinement, must return to court for a transfer hearing no later than when the youth reaches 20 years and nine months of age.

TYC also proposes amendments to §85.21 and §85.25 in order to update cross references to other section numbers within Chapter 85.

Section 85.29, Program Completion for Other Than Sentenced Offenders, will be repealed and proposed as new §85.55.

Section 85.33, Program Completion for Sentenced Offenders will be repealed and proposed as four new rules: §85.59, Program Completion for Sentenced Offenders Under Age 19; §85.61, Program Completion or Sentenced Offenders Age 19 or Older; §85.65, Transfer of Sentenced Offenders to TDCJ-ID;

and §85.69, Program Completion for Sentenced Offenders Adjudicated for Capital Murder. These new sections will establish the agency's program completion requirements for all youth committed to the agency with determinate sentences.

Section 85.35, Maximum Length of Stay for Other Than Type A Violent and Sentenced Offenders, will be repealed and proposed as new §85.41.

Section 85.39, Temporary Admission Awaiting Permanent Placement, will be repealed and proposed as new §85.75.

Section 85.41, Temporary Admission Awaiting Transportation, will be repealed and proposed as new §85.31.

Section 85.43, Home Placement, will be repealed and proposed as new §85.71.

Section 85.45, Parole of Undocumented Foreign Nationals, will be repealed and proposed as new §85.79.

Section 85.51, Interstate Compact for TYC Youth, will be repealed and proposed as new §85.85.

Section 85.61, Discharge/Transfer of Custody, will be repealed and proposed as new §85.95.

New §85.45, Movement Without Program Completion is proposed in order consolidate existing agency rules regarding transition and release without program completion into one new section.

New §85.51, Definitions, is proposed in order to provide definitions of terms used throughout Chapter 85, Subchapter D.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Neil Nichols, General Counsel, has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be a more efficient process for release and transition approval, as well as better organization of and enhanced access to agency rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

SUBCHAPTER B. PLACEMENT PLANNING

37 TAC §§85.21, 85.25, 85.31

The amendments and new rule are proposed under the Human Resources Code, §61.075, which provides TYC with the authority to order a child's confinement under conditions it believes best designed for the child's welfare and the interests of the public; §61.076, which provides TYC the authority to require a child to participate in correctional training and activities; §61.081, which provides TYC the authority to release under supervision any child in its custody and place the child in his or her home or in any situation or family approved by TYC; and §61.034, which provides TYC the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed amendments and new rule affect the Human Resources Code, §61.034.

§85.21. Program Assignment System.

(a) Purpose. The purpose of this rule is to establish an objective, equitable system of program assignment for each youth in Texas Youth Commission (TYC) [~~TYC~~] care. Based on each youth's offense(s)[~~,~~] and risk level, TYC has predetermined the most appropriate level of restriction and minimum length of stay requirement for public protection and for promotion of rehabilitation. Youth in coeducational facilities have equal access to agency programs and activities.

(b) Applicability.

(1) For specifics regarding classification, see [~~(GAP)~~] §85.23 of this title (relating to Classification).

(2) For specifics regarding minimum length of stay, see [~~(GAP)~~] §85.25 of this title (relating to Minimum Length of Stay).

(3) For specifics regarding restriction levels, see [~~(GAP)~~] §85.27 of this title (relating to Program Restriction Levels).

(4) For specifics regarding completion of program and movement to another program, and for specifics on movement of sentenced offender options, refer to the following rules: [~~see (GAP) §85.29 of this title (relating to Program Completion and Movement of Other Than Sentenced Offenders) and (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders).~~]

(A) §85.55 of this title (relating to Program Completion and Movement of Other Than Sentenced Offenders);

(B) §85.59 of this title (relating to Program Completion for Sentenced Offenders Under Age 19);

(C) §85.61 of this title (relating to Program Completion for Sentenced Age 19 or Older);

(D) §85.65 of this title (relating to Transfer of Sentenced Offenders to TDCJ-ID);

(E) §85.69 of this title (relating to Program Completion for Sentence Offenders Adjudicated for Capital Murder); and

(F) §85.41 of this title (relating to Maximum Length of Stay for Other Than Type A Violent and Sentenced Offenders).

(c) (No change.)

(d) System Description. The determining factors result in the following placement and length of stay determinations for all TYC youth on initial commitment, for youth recommitted for the commission of a felony or high risk offense, and for youth found at an administrative Level [~~level~~] I hearing to have committed a felony or high risk offense.

(1) - (3) (No change.)

(4) A chronic serious offender, controlled substances dealer, or firearms offender shall be assigned a minimum length of stay of 12[~~twelve~~] months and with any risk level, assigned to a program of high restriction.

(5) A general offender shall be assigned a minimum length of stay of nine (9) months, and with a:

(A) - (B) (No change.)

(6) (No change.)

(e) (No change.)

(f) Waivers and Exceptions. Waivers and exceptions may be granted under special circumstances.

(1) A restriction level designation, except that of sentenced offender or Type [~~type~~] A violent offender, may be waived by the administrator [~~director~~] of centralized placement unit or designee when a youth is qualified. A designated restriction may be waived in order to provide specialized treatment or when it is determined that a youth is physically handicapped or has a special medical condition, if such handicap or condition would prevent the youth from functioning in the designated restriction level.

(2) Any placement designation except those of sentenced offenders and Type [~~type~~] A violent offenders may be waived by the administrator[~~director~~] of the centralized placement unit or designee when population is at or above established capacity.

(3) For waiver of classification, see [~~(GAP)~~] §85.23 of this title [~~(relating to Classification)~~].

(4) For movement for population control, see §85.45 of this title (relating to Movement Without Program Completion) [~~(GAP) §85.29 of this title (relating to Program Completion and Movement)~~].

(g) Parent Notification. Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to disclose any movement information to a parent. [~~Parents/guardians shall be notified of all placements.~~]

§85.25. Minimum Length of Stay.

(a) Purpose. The purpose of this rule is to establish by policy a minimum period of time a youth will spend in residential placements (high or medium restriction) having reduced access to the public and which is based on the most serious offense the youth committed. The maximum period of time a youth may spend in residential placement is the total time prior to the youth's 21st birthday. [~~Release from residential placement anytime prior to age 21 is based on the youth's successful completion of release criteria, one of which is the minimum length of time set by the agency.~~]

(b) Applicability.

(1) Except where specifically named, requirements herein do not apply to sentenced offenders. See §85.59 of this title (relating to Program Completion for Sentenced Offenders Under Age 19), §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older) and §85.69 of this title (relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder) for additional information. [~~See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders) for additional information.~~] The Texas Youth Commission (TYC) complies with orders of the committing court regarding sentences for youth sentenced to commitment to TYC.

(2) A disciplinary assigned length of stay of up to six (6) months may be assigned in accordance with [~~(GAP)~~] §95.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence).

(c) Explanation of Terms Used.

(1) Minimum Length of Stay--the factor in the placement and movement system which is the predetermined minimum period of time a youth will be assigned to live in a residential placement. TYC has established two [~~(2)~~] types of minimum lengths of stay requirements for TYC youth, classification minimum length of stay, and assigned disciplinary minimum length of stay. This rule primarily addresses classification minimum length of stay.

(2) Minimum period of confinement--the period of time established by law that a youth sentenced to commitment in TYC [~~for offenses occurring on or after January 1, 1996,~~] shall be confined in a TYC residential placement. The minimum period of confinement is the earliest of:

(A) - (B) (No change.)

(3) Classification minimum length of stay--a minimum length of stay directly associated with each classification established on initial commitment, for youth recommitted for the commission of a felony or high-risk offense, and for youth found at an administrative Level [~~level~~] I hearing to have committed a felony or high-risk offense.

(4) (No change.)

(d) Minimum Length of Stay.

(1) Sentenced offenders shall serve the time assessed by the juvenile court, until the earliest of:

(A) - (B) (No change.)

(C) completion of the minimum period of confinement [~~(for youth committed for acts occurring on or after January 1, 1996 only)~~].

(2) - (6) (No change.)

(e) Creditable Time.

(1) (No change.)

(2) On recommitment, the minimum length of stay shall be counted from the first day a youth reaches any TYC operated or assigned facility, and any incomplete minimum length of stay at the time of recommitment is eliminated; unless:

(A) (No change.)

(B) a youth is recommitted for the same conduct for which a Level [~~level~~] I or II hearing has already been held, in which case the youth shall be given credit toward completion of the new minimum length of stay for the time already served as a result of that Level [~~level~~] I or II hearing.

(3) - (5) (No change.)

(f) Creditable Time for Sentenced Offenders.

(1) (No change.)

(2) Sentenced offenders will be credited with days detained in connection with the committing case. Time will be credited at the end of the total sentence. Refer to §85.95 [~~(GAP) §85.61~~] of this title (relating to Discharge/Transfer of Custody).

(g) Restrictions.

(1) - (2) (No change.)

(3) Certain youth may be eligible for transition to medium restriction to complete the minimum length of stay requirement in accordance with §85.55 of this title (relating to Program Completion for Other Than Sentenced Offenders). [~~(GAP) §85.29 of this title (relating to Program Completion and Movement of Other Than Sentenced Offenders).~~]

(4) For other procedures affecting minimum length of stay refer to [~~(GAP)~~]§95.7 of this title (relating to Reclassification Consequence), [~~(GAP)~~]§95.9 of this title (relating to Parole Revocation Consequence), and [~~(GAP)~~]§95.11 of this title [~~(relating to Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence)~~].

(h) Waivers and Reductions.

(1) (No change.)

(2) the disciplinary assigned minimum length of stay may be reduced in accordance with [~~(GAP)~~] §95.11 of this title.

§85.31. Temporary Admission Awaiting Transportation.

(a) Purpose. The purpose of this rule is to provide for temporary admissions into an institution detention program in Texas Youth Commission (TYC) institutional facilities for youths awaiting transportation.

(b) Applicability. This policy does not apply to the use of the same or adjacent space when used specifically as detention in a TYC institution for other purposes. See §97.43 of this title (relating to Institution Detention Program).

(c) Overnight stays in an institution detention program shall be allowed when a youth's destination cannot be reached in a single day, including transportation:

(1) following a Level I or II hearing that results in transportation to another facility; or

(2) between facilities not resulting from disciplinary actions.

(d) The following procedures shall be utilized.

(1) A youth may be detained in a training school for up to 48 hours pending transportation.

(2) Each request for an institution detention program admission pending transportation must be initiated by the transportation coordinator.

(3) Approval for the admission must be obtained from the institutional superintendent or designee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

TRD-200500297
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 424-6301

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37 TAC §§85.29, 85.33, 85.35, 85.39, 85.41, 85.43, 85.45, 85.51, 85.61

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, §61.075, which provides TYC with the authority to order a child's confinement under conditions it believes best designed for the child's welfare and the interests of the public; §61.076, which provides TYC the authority to require a child to participate in correctional training and activities; §61.081, which provides TYC the authority to release under supervision any child in its custody and place the child in his or her home or in any situation or family approved by TYC; and §61.034, which provides TYC the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed repeals affect the Human Resources Code, §61.034.

§85.29. Program Completion and Movement of Other Than Sentenced Offenders.
§85.33. Program Completion and Movement of Sentenced Offenders.
§85.35. Maximum Length of Stay for Other Than Type A Violent and Sentenced Offenders.
§85.39. Temporary Admission Awaiting Permanent Placement.
§85.41. Temporary Admission Awaiting Transportation.
§85.43. Home Placement.
§85.45. Parole of Undocumented Foreign Nationals.
§85.51. Interstate Compact for TYC Youth.
§85.61. Discharge/Transfer of Custody.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

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Dwight Harris
Executive Director
Texas Youth Commission
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SUBCHAPTER C. MOVEMENT WITHOUT PROGRAM COMPLETION

37 TAC §85.41, §85.45

The new rules are proposed under the Human Resources Code, §61.075, which provides TYC with the authority to order a child's confinement under conditions it believes best designed for the child's welfare and the interests of the public; §61.076, which provides TYC the authority to require a child to participate in correctional training and activities; §61.081, which provides TYC the authority to release under supervision any child in its custody and place the child in his or her home or in any situation or family approved by TYC; and §61.034, which provides TYC the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed new rules affect the Human Resources Code, §61.034.

§85.41. Maximum Length of Stay for Other Than Type A Violent and Sentenced Offenders.

(a) Purpose. The Resocialization program is designed for youth who reasonably apply themselves to complete the program within their assigned minimum length of stay. There are, however, a small number of resistant youth who do not complete the Resocialization program within their minimum length of stay. When the length of institutional stay for these youth becomes disproportionate relative to the severity of their committing offense and level of risk to the community, provision must be made to cut short their Resocialization program in the institution and plan for their supervision and services on parole.

(b) Applicability. This rule does not apply to:

(1) any other movement without program completion;

(2) youth who have completed program requirements. See §85.55 of this title (relating to Program Completion for Other Than Sentenced Offenders);

(3) priority 1 youth who are eligible for admission to specialized treatment programs;

(4) youth who have been returned to high restriction through a due process hearing;

(5) sentenced or Type A violent offenders as defined in §85.23 of this title (relating to Classification); and

(6) youth who are unable to progress further in the agency's rehabilitation program because of mental illness or mental retardation and who have completed their minimum lengths of stay. See §87.79 of this title (relating to Discharge of Mentally Ill and Mentally Retarded Youth).

(c) Explanation of Terms Used.

(1) General Offender--means a youth who is classified as a general offender as defined in §85.23 of this title and has never been classified as a sentenced or Type A violent offender.

(2) Type B Violent Offender, Chronic Serious Offender, Controlled Substances Dealer, and Firearms Offender--means a youth who meets the definition in §85.23 of this title and has never been classified as a sentenced or Type A violent offender.

(3) Minimum Length of Stay--means the assigned minimum length of stay for the youth's classification, see §85.23 of this title, plus any disciplinary extensions to the minimum length of stay. See §85.25 of this title (relating to Minimum Length of Stay).

(4) Individual Case Plan (ICP)--the individualized plan for each youth that assesses a youth's needs and strengths, identifies objectives with specific strategies to address both needs and strengths, and is reviewed and adjusted as the youth progresses or as new needs are identified.

(5) Special Services Committee (SSC) exit review--is a process by which the SSC determines whether the youth meets program completion criteria and whether the release ICP adequately addresses the youth's identified risk factors for re-offending.

(6) Release Packet--includes specific documents for review and approval prior to a youth's release. The documents are organized in tabbed sections in a notebook to form the release packet. The release packet includes the following information:

(A) psychological evaluation (if SSC determines it is necessary);

(B) release plan;

(C) home assessment, if applicable;

(D) incident summary;

(E) specialized treatment summary, if applicable; and

(F) victim involvement information, if applicable.

(d) General Requirements.

(1) TYC shall comply with Chapter 57, Family Code and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title (relating to Rights of Victims).

(2) All residential programs releasing an undocumented foreign national youth must notify Immigration and Customs Enforcement (ICE). Refer to §85.79 of this title (relating to Parole of Undocumented Foreign Nationals) for procedures.

(3) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title (relating to Sex Offender Registration).

(4) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to notify parents or guardians of any movement.

(e) Criteria for Release to TYC Parole.

(1) For General Offenders. General offenders who have completed their minimum length of stay, but have not earned phase 4 on all three components of Resocialization, see §87.3 of this title (relating to Resocialization Program), will be released to TYC parole (home or home substitute) when the following requirements are met:

(A) no confirmed Category I rule violations through a due process hearing within 90 days prior to the SSC exit review and during the approval process;

(B) four (4) months have elapsed since completion of the minimum length of stay and a current assessment of, at a minimum, Resocialization phase A3, B3, C3;

(C) eight (8) months have elapsed since completion of the minimum length of stay and a current assessment of, at a minimum, Resocialization phase A2, B2, C2; or

(D) 12 months have elapsed since completion of the minimum length of stay and a current assessment of, at a minimum, Resocialization phase A1, B1, C1.

(2) For Type B Violent Offenders, Chronic Serious Offenders, Controlled Substances Dealers, and Firearms Offenders. Type B violent offenders, chronic serious offenders, controlled substances dealers, and firearms offenders who have completed their minimum length of stay, but have not earned phase 4 on all three components of Resocialization, see §87.3 of this title, will be released to TYC parole when the following requirements are met:

(A) no confirmed Category I rule violations within 90 days prior to the SSC exit review and during the approval process;

(B) eight (8) months have elapsed since completion of the minimum length of stay and a current assessment of, at a minimum, Resocialization phase A3, B3, C3;

(C) 12 months have elapsed since completion of the minimum length of stay and a current assessment of, at a minimum, Resocialization phase A2, B2, C2; or

(D) 18 months have elapsed since completion of the minimum length of stay and a current assessment of, at a minimum, Resocialization phase A1, B1, C1.

(f) Decision Authority for Approval of Release.

(1) The final decision authority shall approve the youth's release plan upon a determination that the youth meets the required criteria as set forth in subsection (e) of this section and the release ICP adequately addresses risk factors.

(2) A youth shall be released to TYC parole (home or home substitute) within 45 days of the SSC exit review validating release eligibility. Upon the approval by the final decision authority, additional time may be granted up to 30 days as the need indicates.

(3) The final decision authority is the Department of Sentenced Offenders Disposition, unless the superintendent or quality assurance supervisor appeals the decision. If the decision is appealed, the appropriate director of juvenile corrections is the final decision authority.

§85.45. Movement Without Program Completion.

(a) Purpose. The purpose of this policy is to establish criteria and procedures for movement of youth without program completion.

(b) Applicability.

(1) This rules does not apply to sentenced offenders.

(2) This rule does not apply to disciplinary movements. See Chapter 95, Subchapter A of this title (relating to Disciplinary Practices).

(c) General Requirements.

(1) Program staff will explain program completion criteria to every youth during orientation to each placement.

(2) Non-sentenced offenders shall by law, be discharged prior to the youth's 21st birthday. Refer to §85.95 of this title (relating to Discharge/Transfer of Custody).

(3) Prior to a transition, a youth may request and in doing so will be granted a Level II hearing.

(4) TYC shall comply with Chapter 57, Family Code and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title (relating to Rights of Victims).

(5) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title (relating to Sex Offender Registration).

(6) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to disclose any movement information to a parent.

(d) Transition Movements.

(1) Eligibility. Type A violent offenders and sentenced offenders are not eligible for transition movement. Youth of eligible classifications must meet transition criteria as set forth in paragraphs (2) and (3) of this subsection to qualify for a transition movement.

(2) Transition Criteria for Youth in Programs where Resocialization is Administered. Youth will be eligible for transition from a high or medium restriction (initial placement) facility to a medium restriction placement when the following criteria have been met:

(A) no confirmed Category I rule violations through a due process hearing within 90 days prior to the exit review; and

(B) no confirmed Category I rule violations through a due process hearing during the approval process, as outlined in paragraph (4) of this subsection; and

(C) completion of minimum length of stay requirements:

(i) general offenders must complete all but three (3) months of the minimum length of stay; or

(ii) Type B violent offenders, chronic serious offenders, controlled substance dealer offenders and firearms offenders must complete all but six (6) months of the minimum length of stay; and

(D) a current assessment of, at a minimum, Resocialization phase A3, B3, C3 with no main objectives or sub-objective indicators under remediation (not applicable to sex offenders with court orders deferring their sex offender registration requirements who have not previously attained phase A4, B4, C4; see §87.85 of this title); and

(E) for youth committed after April 1, 2005, completion of specialized treatment for Priority 1 youth (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(3) Transition Criteria for Youth in Contract Care Programs where Resocialization is Not Administered. Youth in high restriction contract care programs where Resocialization is not administered will be eligible for transition to a medium restriction placement when the following criteria have been met:

(A) no confirmed Category I rule violations through a due process hearing within 90 days prior to the exit review; and

(B) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in paragraph (4) of this subsection; and

(C) completion of minimum length of stay requirements:

(i) general offenders must complete all but three (3) months of the minimum length of stay; or

(ii) Type B violent offenders, chronic serious offenders, controlled substance dealer offenders and firearms offenders must complete all but six (6) months of the minimum length of stay; and

(D) identify personal motivations for delinquent behavior; and

(E) demonstrate an understanding of their personal delinquent behavior patterns and demonstrate the ability to interrupt their offense patterns; and

(F) complete a plan that identifies goals and a plan of action to achieve goals and that identifies obstacles that will support successful re-entry into the community.

(4) Decision Authority for Approval of Transition.

(A) The final decision authority shall approve the youth's transition plan upon a determination that the youth meets all transition criteria and the transition/release ICP adequately addresses risk factors.

(B) The appropriate director of juvenile corrections must approve any modification to the transition/release plan.

(C) A youth shall be transitioned to medium restriction within 14 calendar days of the exit review, regardless of whether or not the release plan is complete. However, if the youth does not meet the program completion criteria at the time of transition or release, the youth will not be transitioned.

(D) With approval from the appropriate director of juvenile corrections, additional time may be granted beyond the 14 calendar days, but not to exceed 30 calendar days from the exit review, as needed to address serious concerns related to the well-being of the youth and/or the community.

(E) The final decision authority is:

(i) the superintendent, for youth assigned to TYC-operated placements; or

(ii) the quality assurance administrator, for youth assigned to contract care placements.

(e) Population Control Releases. When overpopulation occurs in any high restriction facility, certain remedial actions are taken. The deputy executive director may cancel or revise any population control measure in effect or implement any other youth movement option when necessary to control population and/or manage available funds concerning youth in residential placement.

(1) Overpopulation Condition.

(A) When population reaches three percent (3%) above budgeted capacity for general population (excludes youth in specialized treatment), the superintendent may invoke population control release procedures.

(B) When population reaches five percent (5%) above budgeted capacity for general population, the superintendent shall invoke population control release procedures.

(2) Release Criteria.

(A) The following youth are ineligible for population control release:

(i) Type A violent offenders;

(ii) Sentenced offenders;

(iii) Priority 1 specialized treatment youth (unless waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections); or

(iv) Sex offenders with court orders deferring their sex offender registration requirements.

(B) Youth who are eligible for release to TYC parole (home or home substitute) due to an overpopulation condition must meet the following criteria:

(i) completion of the minimum length of stay; and

(ii) a current assessment of, at a minimum, Resocialization phase A3, B3, C3 with no main objectives or sub-objective indicators under remediation. Priority should be given to those who have mastered the most objectives towards completion of A4, B4, C4 Resocialization goals.

(f) Administrative Transfers. Administrative transfers may be made among programs of equal restriction without a due process hearing. An administrative transfer shall not be made in lieu of a transfer for which a due process hearing is mandatory.

(g) Hardship Cases. In hardship cases, the deputy executive director may approve placing a youth on parole status without meeting program completion criteria.

(h) Mentally Ill and Mentally Retarded Youth. Certain youth shall be discharged following application for appropriate services to address their mental illness or mental retardation. See §87.79 of this title (relating to Discharge of Mentally Ill and Mentally Retarded Youth).

(i) Maximum Length of Stay for Other Than Type A Violent and Sentenced Offenders. Youth who do not complete the Resocialization program within the minimum length of stay, and the length of institutional stay becomes disproportionate relative to the severity of their committing offense, may be considered for movement without program completion. See §85.41 of this title (relating to Maximum Length of Stay for Other Than Type A Violent and Sentenced Offenders).

(j) Notification. TYC will notify the committing juvenile judge, the prosecuting attorney, parole officer, and the county chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) working days prior to the transition or release.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

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Dwight Harris
Executive Director
Texas Youth Commission
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For further information, please call: (512) 424-6301

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SUBCHAPTER D. PROGRAM COMPLETION

37 TAC §§85.51, 85.55, 85.59, 85.61, 85.65, 85.69

The new rules are proposed under the Human Resources Code, §61.075, which provides TYC with the authority to order a child's confinement under conditions it believes best designed for the child's welfare and the interests of the public; §61.076, which provides TYC the authority to require a child to participate in correctional training and activities; §61.081, which provides TYC the authority to release under supervision any child in its custody and place the child in his or her home or in any situation or family approved by TYC; and §61.034, which provides TYC the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed new rules affect the Human Resources Code, §61.034.

§85.51. Definitions.

The following words and terms, as used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Administrative transfer--a lateral movement, i.e., a movement from one program to another program within the same restriction level for an administrative purpose. Purposes may include but are not limited to proximity to a youth's home, specific treatment needed becomes available, appropriateness of placement due to education needs, age, etc.

(2) Classification--the designation assigned each youth based on the youth's offense history, the classifying offense, and a finding regarding extenuating circumstances incident to the classifying offense. See §85.23 of this title (relating to Classification).

(3) Exit review/interview--is a process by which the Special Service Committee (SSC), for high restriction, or the superintendent/quality assurance supervisor, for medium restriction, determines whether the youth meets program completion criteria and whether the transition/release Individual Case Plan (ICP) adequately addresses the youth's identified risk factors for re-offending. The SSC is required to conduct a face-to-face interview with sentenced and Type A offenders, along with review and approval of the release packet.

(4) High restriction and medium restriction--see definitions in §85.27 of this title (relating to Program Restriction Levels).

(5) Home placement--is a placement in the home of the parent, other relative or individual acting in the role of parent, managing conservator, or guardian, or an independent living arrangement, for youth who have earned parole status. Parole status is defined in paragraph (7) of this section.

(6) Home substitute placement--is a program placement in the community that is not high restriction, for youth who have earned parole status.

(7) Initial Placement--a placement to which youth are assigned following a period of assessment at the Marlin Orientation Assessment Unit (MOAU) upon being committed to TYC.

(8) Minimum length of stay (MLOS) and Minimum period of confinement (MPC)--see definitions in §85.25 of this (relating to Minimum Length of Stay).

(9) Parole status--a status assigned to a youth when program completion criteria have been met, which qualifies the youth for placement in the home or home substitute and ensures that the youth shall not be moved to a high restriction placement without the highest level of due process afforded to Texas Youth Commission (TYC) youth.

(10) Program completion criteria--the criteria which a youth must meet while in the current program in order to move to a placement of equal or less restriction. Program completion criteria are based on youth's classification and the phase of the Resocialization program, which are outlined in Subchapter C of this chapter (relating to Program Completion and Discharge).

(11) Release under supervision--also referred to as "release", is the release of a youth from high restriction to a home or home substitute placement when the youth has earned parole status. The youth remains under the jurisdiction of TYC and is subject to the conditions of parole supervision.

(12) Risk factors--statuses or conditions that are empirically associated with an increased risk of recidivism. Risk factors may be static and unchangeable or dynamic and responsive to interventions.

(13) Release packet--includes specific documents for review and approval prior to a youth's release. The documents are organized in tabbed sections in a notebook to form the release packet. The release packet includes the following information:

(A) psychological evaluation;

(B) release plan;

(C) home assessment, if applicable;

(D) incident summary;

(E) specialized treatment summary, if applicable; and

(F) victim involvement information, if applicable.

(14) Specialized treatment for Priority 1 youth--upon admission to TYC, all youth undergo clinical assessments to determine specialized treatment needs. Youth are prioritized for treatment based on risk, offense classification, and/or diagnosis. Youth with the greatest need for any of the following treatment programs will be required to successfully complete the program prior to release eligibility:

(A) Sexual Behavior Treatment Program;

(B) Chemical Dependency Treatment Program; or

(C) Capital and Serious Violent Offender Treatment Program.

(15) Transfer--is a movement of sentenced offenders to either Texas Department of Criminal Justice-Institution Division (TDCJ-ID) or Texas Department of Criminal Justice-Parole Division (TDCJ-PD) when:

(A) ordered by the juvenile court; or

(B) youth at age 21 who was sentenced for capital murder where the offense was committed on or after September 1, 2003 and who has not completed the sentence will be transferred to TDCJ-PD without the juvenile courts approval; or

(C) youth at age 21 who was sentenced for any offense other than capital murder and who has not completed the sentence in high restriction facilities will be transferred to TDCJ-PD without the juvenile courts approval.

(16) Transfer packet--includes specific documents for review and approval prior to transfer of a youth to the Texas Department of Criminal Justice-Institutional Division (TDCJ-ID) or Texas Department of Criminal Justice-Parole Division (TDCJ-PD). The documents are organized in tabbed sections in a notebook to form the transfer packet.

(A) The transfer packet for TDCJ-PD includes the following information:

(i) forensic psychological evaluation;

(ii) release plan;

(iii) incident summary;

(iv) specialized treatment summary, if applicable; and

(v) victim involvement information, if applicable.

(B) The transfer packet for TDCJ-ID includes the following information:

(i) forensic psychological evaluation;

(ii) specialized treatment summary, if applicable;

(iii) behavior summary;

(iv) incident summary; and

(v) victim involvement information, if applicable.

(17) Transition--is a movement from one program site to another for purposes of facilitating the youth's adjustment to the community when youth who have met the required transition criteria. Transition is always to placement of equal or less restriction than that of the current placement. Transition is not a type of placement or a status. For transition criteria, see §85.45 of this title (relating to Movement Without Program Completion).

(18) Transition/Release individual case plan (ICP)--is an individual case plan that is developed for a youth when he/she is moving from one program to another, or from one facility to a different facility. The transition/release ICP identifies risk factors and protective factors that enable youth and staff to develop plans to minimize risk and take advantage of protective factors.

(19) Transition/Release plan--includes specific documents such as a success plan, risk factors for re-offending; and strategies and recommendations to minimize risk factors.

(20) Type A violent offender, Type B violent offender, Chronic Serious Offender, Controlled Substances Dealer, Firearms Offender, and General Offender--see definitions in §85.23 of this title (relating to Classification).

(21) Type 1 offenses--the offenses for which a youth has been given a determinate sentence, specifically: the commission, attempted commission, conspiracy to commit, solicitation, solicitation of a minor to commit, or engaging in organized criminal activity to commit murder, capital murder, sexual assault, or aggravated sexual assault.

(22) Type 2 offenses--all other offenses, except Type 1 offenses, for which a youth has been given a determinate sentence.

§85.55. Program Completion for Other Than Sentenced Offenders.

(a) Purpose. The purpose of this rule is to establish criteria and the approval process for release of youth upon program completion.

(b) Applicability.

(1) Definitions pertaining to this rule are under §85.51 of this title (relating to Definitions).

(2) This rule does not apply to disciplinary movements. See Chapter 95, Subchapter A of this title (relating to Disciplinary Practices).

(3) This rule does not apply to sentenced offenders. Rules pertaining to sentenced offenders are §85.59 of this title (relating to Program Completion for Sentenced Offenders Under Age of 19), §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older), §85.65 of this title (relating to Transfer of Sentenced Offenders to TDCJ-ID), and §85.69 of this title (relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder).

(4) For movements without program completion, see §85.45 of this title (relating to Movement Without Program Completion).

(5) For discharge criteria, see §85.95 of this title (relating to Discharge/Transfer of Custody).

(c) General Requirements.

(1) Program staff will explain program completion criteria to every youth during orientation to each placement.

(2) Non-sentenced offenders shall by law, be discharged prior to the youth's 21st birthday. Refer to §85.95 of this title (relating to Discharge/Transfer of Custody).

(3) Prior to a transition, a youth may request and in doing so will be granted a Level II hearing.

(4) TYC shall not accept the presence of a detainer as an automatic bar to earned release. The agency shall release a youth to authorities pursuant to a warrant.

(5) TYC shall develop a plan for each youth prior to release which minimizes risk factors for re-offending.

(6) TYC shall comply with Chapter 57, Family Code, and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title (relating to Rights of Victims).

(7) All residential programs releasing an undocumented foreign national youth must notify Immigration and Customs Enforcement (ICE). Refer to §85.79 of this title (relating to Parole of Undocumented Foreign Nationals).

(8) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title (relating to Sex Offender Registration).

(9) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to disclose any movement information to a parent.

(d) Program Completion Criteria.

(1) Youth Whose Classifying Offense is Type A Violent Offender.

(A) A Type A violent offender youth will be eligible for release from a high restriction facility to TYC parole (home or home substitute) when the following criteria have been met:

(i) no confirmed Category I rule violations through a due process hearing, within 90 days prior to the Special Services Committee (SSC) exit interview; and

(ii) no confirmed Category I rule violations through a due process hearing during the approval process, as outlined in subsection (e) of this section; and

(iii) completion of the minimum length of stay; and

(iv) the youth is currently assessed at Resocialization phase A4, B4, C4 with no main objectives or sub-objective indicators under remediation; and

(v) for youth committed after April 1, 2005, completion of specialized treatment for Priority 1 youth (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(B) Youth classified as Type A violent offender shall be discharged prior to the 21st birthday, unless the youth is subject to a determinate sentence.

(2) Youth Whose Classifying Offense is Other Than Type A Violent Offender. A youth other than a Type A violent offender will be eligible for transition/release from a high restriction facility to a less restrictive placement or from a medium restriction facility to an equal or less restrictive placement when the following criteria have been met:

(A) For transition from high or medium restriction to medium restriction: For transition criteria, see §85.45 of this title.

(B) For release from high or medium restriction to TYC parole (home or home substitute):

(i) no confirmed Category I rule violations through a due process hearing, within 90 days prior to the exit review; and

(ii) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in subsection (e) of this section; and

(iii) completion of the entire minimum length of stay--this includes general offenders whose initial placement is to medium restriction; and

(iv) the youth is currently assessed at Resocialization phase A4, B4, C4 with no main objectives or sub-objective indicators under remediation; and

(v) for youth committed after April 1, 2005, completion of specialized treatment for Priority 1 youth (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(3) Youth in Contract Care Programs Where Resocialization is Not Administered. Youth in high or medium restriction contract

care programs where Resocialization is not administered will be eligible for release to TYC parole (home or home substitute) when the following criteria have been met:

(A) no confirmed Category I rule violations through a due process hearing, within 90 days prior to the exit review; and

(B) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in subsection (e) of this section; and

(C) completion of the minimum length of stay; and

(D) identify personal motivations for delinquent behavior; and

(E) demonstrate an understanding of their personal delinquent behavior patterns and demonstrate the ability to interrupt their offense patterns; and

(F) complete a plan that:

(i) identifies goals and a plan of action to achieve goals; and

(ii) identifies obstacles that will support successful re-entry into the community.

(e) Decision Authority for Approval of Release.

(1) For Type A Violent Offenders.

(A) A youth shall not be released to TYC parole until the final decision authority has determined that the youth meets program completion criteria and the release Individual Case Plan (ICP) adequately addresses risk factors.

(B) All revisions or corrections as requested by Central Office must be completed and re-submitted to Central Office within the timeframe designated by Central Office.

(C) If modifications are needed to the transition/release ICP and supporting documentation for Type A violent offenders who have been released on TYC parole to a home substitute placement, the appropriate director of juvenile corrections must approve the modification.

(D) The final decision authority is the deputy executive director.

(E) The youth shall be released no later than 120 days following the SSC exit interview validating release eligibility, regardless of whether or not the release packet is complete. However, if the youth does not meet the program completion criteria at the time of release, the youth will not be released.

(2) For Other Than Type A Violent Offenders.

(A) The final decision authority shall approve the youth's release plan upon a determination that the youth meets all program completion criteria and the transition/release ICP adequately addresses risk factors.

(B) The appropriate director of juvenile corrections must approve any modification to the release plan.

(C) A youth shall be released to TYC parole within 14 calendar days of the exit review, regardless of whether or not the release plan is complete. However, if the youth does not meet the program completion criteria at the time of release, the youth will not be released.

(D) Upon the approval by the appropriate director of juvenile corrections, additional time may be granted beyond the 14 calendar days, but not to exceed 30 calendar days from the exit review, as needed to address serious concerns related to the well-being of the youth and/or the community.

(E) The final decision authority is:

(i) the superintendent, for other than Type A violent offenders; or

(ii) the quality assurance administrator, for other than Type A violent offenders assigned to contract placements.

(f) Notification. TYC will notify the committing juvenile judge, the prosecuting attorney, parole officer, and the county chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) working days prior to the transition or release.

§85.59. Program Completion for Sentenced Offenders Under Age 19.

(a) Purpose. The purpose of this rule is to establish criteria and approval process for release of youth upon program completion.

(b) Applicability.

(1) Definitions pertaining to this rule are under §85.51 of this title (relating to Definitions).

(2) This rule does not apply to disciplinary movements. See Chapter 95, Subchapter A of this title (relating to Disciplinary Practices).

(3) This rule does not apply to youth committed to TYC on indeterminate commitments. See §85.55 of this title (relating to Program Completion for Other Than Sentenced Offenders).

(4) This rule does not apply to the transfer of sentenced offenders to the Texas Department of Criminal Justice-Institutions Division (TDCJ-ID) or Texas Department of Criminal Justice-Parole Division (TDCJ-PD). See §85.65 of this title (relating to Transfer of Sentenced Offenders to TDCJ-ID) and §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older).

(5) This rule does not apply to sentenced offenders adjudicated for capital murder. See §85.69 of this title (relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder).

(6) For discharge criteria, see §85.95 of this title (relating to Discharge/Transfer of Custody).

(c) General Restrictions. Due to the nature of determinate sentences, some rules governing the classification, placement, release, transition, parole status, and disciplinary movement of sentenced offenders must be applied differently. Specifically:

(1) Classification. A youth classified at commitment as a sentenced offender shall retain a sentenced offender classification as long as the youth remains under the jurisdiction of TYC as a result of that commitment. The offense for which the youth received the determinate sentence will remain the youth's classifying offense until the sentence has expired even if the youth's TYC parole is revoked following a Level I hearing. See §85.23 of this title (relating to Classification).

(2) Initial Placement. On initial placement, all sentenced offenders shall be assigned to high restriction facilities unless the deputy executive director waives such placement for a particular youth.

(d) General Requirements.

(1) Program staff will explain program completion criteria to every youth during orientation to each placement.

(2) TYC shall not accept the presence of a detainer as an automatic bar to earned release. The agency shall release a youth to authorities pursuant to a warrant.

(3) The Special Services Committee (SSC) shall evaluate the youth's progress toward program completion criteria six (6) months after admission to TYC, when the minimum period of confinement (MPC) is complete, and at other times as requested by the committee.

(4) TYC shall develop a plan for each youth prior to release which minimizes risk factors for re-offending.

(5) TYC shall comply with Chapter 57, Family Code and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title (relating to Rights of Victims).

(6) All residential programs releasing an undocumented foreign national youth must notify Immigration and Customs Enforcement (ICE). Refer to §85.79 of this title (relating to Parole of Undocumented Foreign Nationals) for procedures.

(7) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title (relating to Sex Offender Registration).

(8) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to notify parents or guardians of any movement.

(9) Placement. Sentenced offenders shall serve the entire MPC applicable to the youth's classifying offense in high restriction facilities unless:

(A) the youth is transferred to TDCJ earlier in accordance with legal requirements or committing court approval. See §85.65 of this title; or

(B) waived by the executive director; or

(C) the youth is approved by the committing court to attain parole status prior to completion of serving the MPC.

(10) Jurisdiction Termination. TYC jurisdiction shall be terminated and a sentenced offender discharged when he/she is transferred to TDCJ (before or at age 21) or his/her sentence is complete (except as specified in subsection (d)(11) of this section).

(11) Concurrent Commitments. In the event that a youth is committed to TYC under concurrent determinate sentence and indeterminate commitment orders, both commitment orders will be given effect, with the determinate sentence order having precedence. Other exceptions are as follows:

(A) The youth will be classified and managed as a sentenced offender until such time as the determinate sentence order is completed or TYC jurisdiction expires, whichever occurs first. If a youth's determinate sentence is complete prior to the expiration of TYC jurisdiction, the youth will be newly classified in accordance with the classifying offense associated with the indeterminate commitment.

(B) The youth is discharged from the determinate sentence order upon completion of the determinate sentence, but the indeterminate commitment order will be given effect until normal discharge criteria are met.

(C) Both orders are given effect, i.e., the MPC under the determinate sentence and the minimum length of stay associated with the indeterminate commitment will run concurrently. If the applicable MPC under the determinate sentence is completed before the applicable minimum length of stay under the indeterminate commitment, the youth will not be considered for release until the minimum length of stay has also been completed.

(12) Military Enlistment. A sentenced offender may be allowed to enlist in the military while on TYC parole if certain conditions are met. A sentenced offender who is accepted for enlistment by the military will not be discharged from the determinate sentence until the sentence is complete. His/her TYC parole supervision will be conducted via phone calls, letters, and through face-to-face contacts (when possible) until the sentence is completed. The following conditions must be met:

(A) the youth must be able to complete his/her sentence prior to his/her 21st birthday; and

(B) the youth must have served at least 12 months consecutively on TYC parole prior to the enlistment date; and

(C) the youth must have been assigned to the minimum level of parole supervision for at least three (3) months consecutively prior to the enlistment date; and

(D) the youth must have no more than six (6) months left to serve on the sentence on the enlistment date; and

(E) the youth must reside in Texas at the time of enlistment.

(e) Program Completion Criteria. A sentenced offender youth who is under age 19 will be eligible for a release from a high restriction facility to TYC parole (home or home substitute) when the following criteria have been met:

(1) no confirmed Category I rule violations through a due process hearing, within 90 days prior to the SSC exit interview; and

(2) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in subsection (f) of this section; and

(3) completion of the MPC; and

(4) the youth is currently assessed at Resocialization phase A4, B4, C4 with no objectives or sub-objectives under remediation; and

(5) for youth committed after April 1, 2005, completion of specialized treatment for Priority 1 youth (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(f) Decision Authority for Approval of Release. For Type 1 and Type 2 sentenced offenders under age 19.

(1) A youth shall not be released to TYC parole until the final decision authority has determined that the youth meets program completion requirements and the release packet adequately addresses risk factors.

(2) All revisions or corrections as requested by Central Office must be completed and re-submitted to Central Office within the timeframe designated by Central Office.

(3) If modifications are needed to the release ICP and supporting documentation for sentenced offender youth who have been released on TYC parole to a home substitute placement, the modification must be approved by the appropriate director of juvenile corrections.

(4) The final decision authority for approval of release is:

(A) the deputy executive director, for Type 1 sentenced offenders;

(B) the appropriate director of juvenile corrections, for Type 2 sentenced offenders.

(5) A youth shall be released no later than 120 days following the SSC exit interview validating release eligibility, regardless of whether or not the release packet is complete. However, if the youth does not meet the program completion criteria at the time of release, the youth will not be released.

(g) Notification. TYC will notify the committing juvenile judge, the prosecuting attorney, parole officer, and the county chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) working days prior to the release.

§85.61. Program Completion for Sentenced Offenders Age 19 or Older.

(a) Purpose. The purpose of this rule is to establish criteria and approval process for transferring a sentenced offender youth age 19 or older upon program completion to the Texas Department of Criminal Justice-Parole Division (TDCJ-PD).

(b) Applicability.

(1) Definitions pertaining to this rule are under §85.51 of this title (relating to Definitions).

(2) This rule does not apply to disciplinary movements. See Chapter 95, Subchapter A of this title (relating to Disciplinary Practices).

(3) This rule does not apply to youth committed to TYC on indeterminate commitments. See §85.55 of this title (relating to Program Completion for Other Than Sentenced Offenders).

(4) This rule does not apply to sentenced offenders who are under the age of 19. See §85.59 of this title (relating to Program Completion for Sentenced Offenders Under Age 19).

(5) This rule does not apply to the transfer of sentenced offenders to the Texas Department of Criminal Justice-Institutions Division (TDCJ-ID). See §85.65 of this title (relating to Transfer of Sentenced Offenders to TDCJ-ID).

(6) This rule does not apply to the transfer of sentenced offenders committed for capital murder. See §85.69 of this title (relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder).

(7) For discharge criteria, see §85.95 of this title (relating to Discharge/Transfer of Custody).

(c) General Restrictions. Refer to §85.59 of this title for the list of general restrictions.

(d) General Requirements.

(1) Program staff will explain program completion criteria to every youth during orientation to each placement.

(2) The Special Services Committee (SSC) shall evaluate the youth's progress toward program completion criteria six (6) months after admission to TYC, when the minimum period of confinement (MPC) is complete, on or about the youth's 20th birthday, and at other times as requested by the committee.

(3) TYC shall comply with Chapter 57, Family Code, and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title (relating to Rights of Victims).

(4) All residential programs releasing an undocumented foreign national youth must notify Immigration and Customs Enforcement (ICE). Refer to §85.79 of this title (relating to Parole of Undocumented Foreign Nationals) for procedures.

(5) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title (relating to Sex Offender Registration).

(6) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to disclose any movement information to a parent.

(7) Placement. Sentenced offenders shall serve the entire MPC applicable to the youth's classifying offense in high restriction facilities unless the youth is:

(A) transferred to TDCJ earlier in accordance with legal requirements or committing court approval. See §85.65 of this title; or

(B) approved by the committing court to attain parole status prior to completion of serving the MPC.

(8) Jurisdiction Termination. TYC jurisdiction shall be terminated and a sentenced offender discharged when he/she is transferred to TDCJ or his/her sentence is complete (except as specified in subsection (d)(9) of this section).

(9) Concurrent Commitments. In the event that a youth is committed to TYC under concurrent determinate sentence and indeterminate commitment orders, both commitment orders will be given effect, with the determinate sentence order having precedence. Other exceptions are as follows:

(A) The youth will be classified and managed as a sentenced offender until such time as the determinate sentence order is completed or TYC jurisdiction expires, whichever occurs first. If a youth's determinate sentence is complete prior to the expiration of TYC jurisdiction, the youth will be newly classified in accordance with the classifying offense associated with the indeterminate commitment.

(B) The youth is discharged from the determinate sentence order upon completion of the determinate sentence, and the youth is discharged from the indeterminate commitment order upon completion of the indeterminate offense.

(C) The determinate sentence and the minimum length of stay associated with the indeterminate commitment will run concurrently. If the applicable MPC under the determinate sentence is completed before the applicable minimum length of stay under the indeterminate commitment, the youth will not be considered for transfer to parole status until the minimum length of stay has also been completed.

(10) Military Enlistment. Refer to §85.59 of this title for procedures.

(e) Program Completion Criteria.

(1) Transfer of a youth from a high restriction facility to TDCJ-PD shall occur (court approval is not required) based on the youth's age.

(A) Youth Between Age 19 and 21. Youth between age 19 and 21 in high restriction facilities will be transferred to TDCJ-PD when the following criteria have been met:

(i) no confirmed Category I rule violations through a due process hearing, within 90 days prior to the SSC exit interview; and

(ii) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in subsection (g) of this section; and

(iii) completion of the MPC; and

(iv) the youth is currently assessed at Resocialization phase A4, B4, C4 with no main objectives or sub-objectives indicators under remediation; and

(v) for youth committed after April 1, 2005, successful completion of specialized treatment for Priority 1 youth (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(B) Youth at age 21 who were sentenced for any offense other than capital murder, and have not completed the sentence in high restriction facilities, will be transferred to TDCJ-PD to complete the sentence.

(2) Transfer from TYC parole (home or home substitute) to TDCJ-PD shall occur (court approval not required) at age 21 if the youth has not completed his/her sentence.

(f) Decision Authority for Approval of Transfer.

(1) For Youth Between Age 19 and 21.

(A) Youth between age 19 and 21 shall not be transferred to TDCJ-PD until the final decision authority has determined that the youth meets program completion criteria and the transfer packet adequately addresses risk factors.

(B) All revisions or corrections as requested by Central Office must be completed and re-submitted to Central Office within the timeframe designated by Central Office.

(C) The final decision authority is the deputy executive director.

(D) TYC will request the transfer to TDCJ-PD no later than 30 days from the final approval date.

(2) For Youth At Age 21. State law requires transfer of custody for sentenced offenders at age 21; therefore no decision authority is necessary.

(g) ICP Modification Approval. If modifications are needed to the transition/release ICP and/or supporting documentation for sentenced offender youth who have been released on TYC parole to a home substitute placement, the modification must be approved by the appropriate director of juvenile corrections.

(h) Transfer Process to TDCJ-PD.

(1) TYC will submit the required documentation requesting a transfer of the offender to TDCJ-PD along with an adjudication form and a case summary, which includes recommendations for parole conditions within 30 days from the final approval date.

(2) TDCJ will process the information and forward to the Texas Board of Pardons and Paroles who will set the conditions for parole within 90 days of receiving TYC's transfer notification.

(3) On receipt of the conditions from TDCJ, the TYC/TDCJ liaison will contact TDCJ-PD to confirm the transfer date, notify the sending facility of the parole conditions and the transfer date, coordinate the transfer process and make final arrangements for the discharge.

(4) TDCJ personnel will serve their Order of Transfer in person on the scheduled day, at which time the sentenced offender youth is transferred to the TDCJ-PD and discharged from the TYC.

(i) Notification. TYC will notify the committing juvenile judge, the prosecuting attorney, parole officer, and the county chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) working days prior to the transfer.

§85.65. Transfer of Sentenced Offenders to TDCJ-ID.

(a) Purpose. The purpose of this rule is to establish criteria and approval process for transferring a sentenced offender youth to the Texas Department of Criminal Justice-Institutions Division (TDCJ-ID).

(b) Applicability.

(1) Definitions pertaining to this rule are under §85.51 of this title (relating to Definitions).

(2) This rule does not address all types of disciplinary movements. See Chapter 95, Subchapter A of this title (relating to Disciplinary Practices).

(3) This rule does not apply to the transfer of sentenced offenders to TDCJ-Parole Division (TDCJ-PD). See §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older).

(4) This rules does not apply to the transfer of sentenced offenders adjudicated for capital murder to TDCJ-ID. See §85.69 of this title (relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder).

(5) This rule does not apply to new charges incurred by sentenced offenders while committed to Texas Youth Commission (TYC), but only to the disposition of the original determinate sentence.

(6) For discharge criteria, see §85.95 of this title (relating to Discharge/Transfer of Custody).

(c) General Restrictions. Refer to §85.59 of this title (relating to Program Completion for Sentenced Offenders Under Age 19) for the list of general restrictions.

(d) General Requirements.

(1) Program staff will explain transfer criteria to every youth during orientation to each placement.

(2) The Special Services Committee (SSC) shall evaluate the youth's progress toward program completion criteria six (6) months after admission to TYC, when the minimum period of confinement (MPC) is complete, on or about the youth's 20th birthday, and at other times as requested by the committee.

(3) TYC program staff where the youth is assigned shall determine when transfer criteria have been met.

(4) TYC shall comply with Chapter 57, Family Code, and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title (relating to Rights of Victims).

(5) All residential programs releasing an undocumented foreign national youth must notify Immigration and Customs Enforcement (ICE). Refer to §85.79 of this title (relating to Parole of Undocumented Foreign Nationals) for procedures.

(6) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title (relating to Sex Offender Registration).

(7) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to disclose any movement information to a parent.

(e) Transfer Criteria.

(1) Sentenced Offender Youth Whose Parole has been Revoked. A transfer shall occur if ordered by the juvenile court. TYC

may request a juvenile court hearing for a youth whose parole has been revoked and the following criteria have been met:

(A) youth is at least age 16; and

(B) youth has not completed his/her sentence; and

(C) youth's conduct indicates that the welfare of the community requires the transfer.

(2) Sentenced Offender Youth in Residential Placement. A transfer shall occur if ordered by the juvenile court. TYC may request a juvenile court hearing for any other youth if the following criteria have been met:

(A) youth is at least age 16; and

(B) youth has spent at least six (6) months in a high restriction facility; and

(C) youth has not completed his/her sentence; and

(D) youth has met at least one of the following behavior criteria:

(i) youth has committed a felony or Class A misdemeanor; or

(ii) youth has committed Category I rule violations (on three or more occasions); or

(iii) youth has engaged in chronic disruption of program (five security admissions or extensions in one month or ten in three months); or

(iv) youth has demonstrated an inability to progress in his/her Resocialization Program due to persistent non compliance with treatment objectives; and

(E) alternative interventions have been tried without success. (For example: special treatment plans, disciplinary transfer, extended stay); and

(F) youth's conduct indicates that the welfare of the community requires the transfer.

(f) Decision Authority for Approval to Transfer. Transferring from a high restriction facility the following procedures will occur:

(1) A youth shall not be transferred to TDCJ-ID until the final decision authority has determined that the youth meets program completion requirements and the transfer plan adequately addresses risk factors.

(2) The final TYC decision authority is the deputy executive director

(3) The deputy executive director must approve the request for a hearing by the committing juvenile court for early transfer.

(4) The final transfer approval authority for early transfer to TDCJ-ID, prior to the completion of the MPC, is the committing juvenile court.

(g) Transfer Process.

(1) Following the committing court's decision to transfer a sentenced offender to TDCJ-ID, the youth is returned to the assigned program location and then transported to TDCJ-ID.

(2) The youth will be transported to the diagnostic unit at TDCJ in Huntsville, Texas. The TYC court liaison in Central Office will provide the address or location to the diagnostic unit, if needed.

(3) Upon transfer to TDCJ-ID, the youth may bring only the following personal property items to TDCJ-ID:

(A) Bible/Other Religion Text--some offenders write addresses and telephone numbers in it since they cannot take separate paper into TDCJ-ID;

(B) Trust fund--offender must use TDCJ personal property envelopes. Use the TDCJ Inmate Trust Fund form, ITF-16 (available through TDCJ) when sending offender's trust fund after the offender has already been transported to TDCJ-ID. The guards at the Diagnostic Unit can provide the Inmate Trust Fund form, ITF-16, if needed.

(h) Notification. TYC will notify the committing juvenile judge, the prosecuting attorney, parole officer, and the county chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) working days prior to the discharge.

§85.69. Program Completion for Sentenced Offenders Adjudicated for Capital Murder.

(a) Purpose. The purpose of this rule is to establish criteria and an approval process for transferring, upon program completion, sentenced offenders adjudicated for capital murder to the Texas Department of Criminal Justice-Parole Division (TDCJ-PD) or the Texas Department of Criminal Justice-Institutions Division (TDCJ-ID).

(b) Applicability.

(1) Definitions pertaining to this rule are under §85.51 of this title (relating to Definitions).

(2) This rule does not apply to disciplinary movements. See Chapter 95, Subchapter A of this title (relating to Disciplinary Practices).

(3) This rule does not apply to youth committed to Texas Youth Commission (TYC) on indeterminate commitments. See §85.55 of this title (relating to Program Completion for Other Than Sentenced Offenders).

(4) This rule does not apply to the release of sentenced offender youth adjudicated for any offense other than capital murder. See §85.59 of this title (relating to Program Completion for Sentenced Offenders Under Age 19) and §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older).

(5) For discharge criteria, see §85.95 of this title (relating to Discharge/Transfer of Custody).

(c) General Restrictions. Refer to §85.59 of this title for the list of general restrictions.

(d) General Requirements.

(1) Program staff will explain the program completion criteria to every youth during orientation to each placement.

(2) TYC shall not accept the presence of a detainer as an automatic bar to earned release. The agency shall release a youth to authorities pursuant to a warrant.

(3) The Special Services Committee (SSC) shall evaluate the youth's progress toward program completion criteria six (6) months after admission to TYC, when the minimum period of confinement (MPC) is complete, on or about the youth's 20th birthday, and at other times as requested by the committee.

(4) TYC program staff where the youth is assigned shall make the recommendation for a release when program completion criteria have been met or a transfer to TDCJ-ID.

(5) TYC shall comply with Chapter 57, Family Code, and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title (relating to Rights of Victims).

(6) All residential programs releasing an undocumented foreign national youth must notify Immigration and Customs Enforcement (ICE). Refer to §85.79 of this title (relating to Parole of Undocumented Foreign Nationals) for procedures.

(7) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title (relating to Sex Offender Registration).

(8) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to disclose any movement information to a parent.

(9) Minimum Period of Confinement. The MPC is ten (10) years for youth sentenced for capital murder or completion of the sentence, whichever occurs first.

(10) Placement. Sentenced offenders shall serve the entire MPC applicable to the youth's classifying offense in high restriction facilities unless the youth is:

(A) transferred to TDCJ-ID earlier in accordance with legal requirements or committing court approval. See §85.65 of this title (relating to Transfer of Sentenced Offenders to TDCJ-ID); or

(B) approved by the committing court to attain parole status prior to completion of serving the MPC.

(11) Jurisdiction Termination. TYC jurisdiction shall be terminated and a sentenced offender discharged when the youth is transferred to TDCJ (by age 21) or his/her sentence is complete (except as specified in subsection (d)(12) of this section).

(12) Concurrent Commitments. In the event that a youth is committed to TYC under concurrent determinate sentence and indeterminate commitment orders, both commitment orders will be given effect, with the determinate sentence order having precedence. Other exceptions are as follows:

(A) The youth will be classified and managed as a sentenced offender until such time as the determinate sentence order is completed or TYC jurisdiction expires, whichever occurs first. If a youth's determinate sentence is complete prior to the expiration of TYC jurisdiction, the youth will be newly classified in accordance with the classifying offense associated with the indeterminate commitment.

(B) The youth is discharged from the determinate sentence order upon completion of the determinate sentence, and the youth is discharged from the indeterminate commitment order upon completion of the indeterminate offense.

(C) The determinate sentence and the minimum length of stay associated with the indeterminate commitment will run concurrently.

(13) Military Enlistment--See §85.59 of this title.

(e) Program Completion Criteria. Transfer of a youth from high restriction (prior to the completion of the MPC) to TDCJ-PD/TDCJ-ID before age 21.

(1) For Transferring to TDCJ-PD (Before Age 21). A transfer shall occur if ordered by the juvenile court. TYC may request a court hearing if the following criteria have been met:

(A) no confirmed Category I rule violations through a due process hearing, within 90 days prior to the SSC exit interview; and

(B) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in subsection (f) of this section; and

(C) completion of three (3) years toward the MPC, and

(D) the youth is currently assessed at Resocialization phase A4, B4, C4 with no main objectives or sub-objectives indicators under remediation; and

(E) for youth committed after April 1, 2005, successful completion of specialized treatment for Priority 1 youth (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(2) For Transferring to TDCJ-ID (Before Age 21). A transfer shall occur if ordered by the juvenile court. TYC may request a court hearing if the following criteria have been met:

(A) youth is at least age 16; and

(B) youth has spent at least six (6) months in a high restriction facility; and

(C) youth has not completed his/her sentence; and

(D) youth has met at least one of the following behavior criteria:

(i) youth has committed a felony or Class A misdemeanor while assigned to residential placement; or

(ii) youth has committed Category I rule violations (on three or more occasions); or

(iii) youth has engaged in chronic disruption of program (five security admissions or extensions in one month or ten in three months); or

(iv) youth has demonstrated an inability to progress in his/her Resocialization program due to persistent non compliance with treatment objectives; and

(E) alternative interventions have been tried without success. (For example: special treatment plans, disciplinary transfer, extended stay); and

(F) youth's conduct indicates that the welfare of the community requires the transfer.

(3) For Transferring to TDCJ-ID/TDCJ-PD When the Offense was Committed Before September 1, 2003. (Before age 21) A youth who was sentenced for capital murder where the offense was committed before September 1, 2003, who has not completed the ten (10) year MPC must return to court for a transfer hearing no later than age 20.9. (court approval is required)

(4) For Transferring to TDCJ-PD (At Age 21). At age 21, a youth who was sentenced for capital murder where the offense was committed on or after September 1, 2003 who has not completed the sentence will be transferred to TDCJ-PD. (court approval is not required)

(f) Decision Authority for Approval of Transferring to TDCJ-PD/TDCJ-ID (Before Age 21). In order to achieve the transfer from a high restriction facility to TDCJ-PD/TDCJ-ID, prior to the completion of the MPC and before age 21, a hearing request must be made to the committing juvenile court for transferring to TDCJ-PD/TDCJ-ID. The following procedures will occur:

(1) A youth shall not be transferred to TDCJ-PD until the final decision authority has determined that the youth meets program completion requirements and the transfer plan adequately addresses risk factors.

(2) A youth shall not be transferred to TDCJ-ID until the final decision authority has determined that youth meets transfer criteria.

(3) The final decision authority for transferring to TDCJ-PD is the executive director.

(4) The executive director must approve the request for a hearing by the committing juvenile court to transfer youth to TDCJ-ID.

(5) The court is the final authority for transferring to TDCJ-ID.

(g) Transfer Process.

(1) Transferring to TDCJ-PD.

(A) TYC will submit the required documentation requesting a transfer of the offender to TDCJ-PD along with an adjudication form and a case summary, which includes recommendations for parole conditions.

(B) TDCJ will process the information and forward to the Texas Board of Pardons and Paroles who will set the conditions for parole or transfer within 90 days of receiving TYC's transfer notification.

(C) On receipt of the conditions, the TYC/TDCJ liaison will contact TDCJ-PD to confirm the transfer date, notify the sending facility of the parole conditions and the transfer date, coordinate the transfer process and make final arrangements for the discharge.

(D) TDCJ personnel will serve their Order of Transfer in person on the scheduled day, at which time the sentenced offender youth is transferred to the TDCJ-PD and discharged from the TYC.

(2) Transferring to TDCJ-ID.

(A) Following the committing court's decision to transfer a sentenced offender to TDCJ-ID, the youth is returned to the assigned program location and then transported to TDCJ-ID.

(B) The youth will be transported to the diagnostic unit at TDCJ in Huntsville, Texas. The TYC court liaison in Central Office will provide the address or location to the diagnostic unit, if needed.

(C) Upon transfer to TDCJ-ID, the youth may bring only the following personal property items to TDCJ-ID:

(i) Bible/Other Religion Text--some offenders write addresses and telephone numbers in it since they cannot take separate paper into TDCJ-ID;

(ii) Trust fund--offender must use TDCJ personal property envelopes. Use the TDCJ Inmate Trust Fund form, ITF-16 (available through TDCJ) when sending offender's trust fund after the offender has already been transported to TDCJ-ID. The guards at the Diagnostic Unit can provide the Inmate Trust Fund form, ITF-16, if needed.

(h) Notification. TYC will notify the committing juvenile judge, the prosecuting attorney, parole officer, and the county chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) working days prior to the discharge.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

TRD-200500299

Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 424-6301

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SUBCHAPTER E. PAROLE PLACEMENT AND DISCHARGE

37 TAC §§85.71, 85.75, 85.79, 85.85, 85.95

The new rules are proposed under the Human Resources Code, §61.075, which provides TYC with the authority to order a child's confinement under conditions it believes best designed for the child's welfare and the interests of the public; §61.076, which provides TYC the authority to require a child to participate in correctional training and activities; §61.081, which provides TYC the authority to release under supervision any child in its custody and place the child in his or her home or in any situation or family approved by TYC; and §61.034, which provides TYC the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed new rules affect the Human Resources Code, §61.034.

§85.71. Home Placement.

(a) Purpose. The purpose of this rule is to establish criteria and procedures used by Texas Youth Commission (TYC) staff to determine whether a youth in TYC jurisdiction will be allowed to return to his/her home on completion of program requirements or whether alternative living arrangements must be sought.

(b) Applicability.

(1) This policy applies to all committed youth who will be placed on parole prior to age 21.

(2) For Determinate Sentenced offenders, if the minimum period of confinement date will occur on or after the youth's 19th birthday, the parole officer is exempt from completing home assessments or updates since the youth, if released to parole, will be under the supervision of the Texas Department of Criminal Justice-Parole Division (TDCJ-PD).

(3) Other related policies may apply such as §87.91 of this title (relating to Family Reintegration of Sex Offenders) and §85.79 of this title (relating to Parole of Undocumented Foreign Nationals).

(c) Explanation of Terms Used.

(1) Approved Home Placement Status--occurs when the assessment indicates conditions that could facilitate the rehabilitative adjustment of the youth.

(2) Disapproved Home Placement Status--occurs when the assessment indicates conditions that would impede the rehabilitative adjustment or threaten safety of the youth and/or other individuals in the home.

(3) Incomplete Home Placement Status--the assessment process is not complete.

(4) Placement Objection--occurs when a home assessment indicates that none of the criteria for disapproval of the home exists but:

(A) the parent provides in writing that he/she cannot or will not supervise the youth; or

(B) the parent provides in writing that the youth is not welcome in the home; or

(C) a parent refusing to accept supervision of his/her child under the age of 18, and/or a TYC youth claiming abuse in the home, will be reported to the Department of Family and Protective Services (DFPS).

(5) Sexual Abuse Victim--a person who, as the result of a sexual offense, suffers a pecuniary loss or personal injury or harm.

(6) Potential Sexual Abuse Victim--a person who has a profile similar to that of the victim of the sexual offense, such as gender, age, etc., or who has a profile that triggers the delinquent's deviant or abusive sexual arousal patterns.

(d) Home Placement Assessment.

(1) The assigned parole officer shall assess the home of each youth in his/her jurisdiction and shall determine whether the home is approved or disapproved for placement. The assigned parole officer will also determine whether the youth will be returned to his/her home upon release from residential placement. Each home assessment will be completed in the home of the youth's legal parent(s), guardian, or relative who has volunteered to have the youth placed in his/her home. The home assessment process is also applicable to all youth properly referred to parole officers through the Texas Interstate Compact on Juveniles (ICJ) Office.

(2) Within 90 days of admission to TYC, all homes shall be either approved or disapproved as a result of a completed home placement assessment.

(3) The home placement assessment status may be changed but only as a result of a follow-up home placement assessment by the assigned parole officer.

(4) A completed home placement assessment shall be considered current for any youth released to his/her home within 12 months of the first day counted on the minimum length of stay. Home placement assessment follow-ups will be conducted annually thereafter.

(5) For Type A violent offenders who have a minimum length of stay of 24 months, the follow-up home assessment is to be conducted within 45 days after completion of phase A2, B2, C3 and be incorporated into the transition plan.

(6) Any time new evidence or special circumstances warrant, a follow-up home placement assessment may be conducted.

(e) Home Approval/Disapproval Criteria. A youth's home shall be considered approved unless one or more of the following disapproval criteria exists, and can be documented:

(1) physical abuse;

(2) sexual abuse;

(3) physical absence of parent caretaker due to criminal incarceration or physical/psychiatric hospitalization;

(4) serious physical/survival neglect;

(5) legal termination of parental rights for youth under 18 years of age;

(6) the youth is a sex offender and criteria/requirements in §87.91 of this title have not been met;

(7) the youth is an undocumented foreign national and a copy of the notice from TYC to the Immigration and Customs Enforcement Agency (ICE) has not been received by the parole officer as outlined in §85.79 of this title.

(f) Parole Placement.

(1) Approved Home--Placement Objection Exists. An approved home with objections exists when the parents/guardian refuse or is unable to accept supervision and placement in the home. The parole officer and primary service worker (PSW) will determine alternative home placements. Alternative home placements may be determined depending on whether or not the youth is over 18 years of age.

(2) Disapproved Home Placement.

(A) Youth with disapproved homes will not be returned/placed in their homes.

(B) A disapproved home may be reversed if the TYC parole staff determines specific actions have been taken to correct any deficiencies.

(C) Parents are immediately informed in writing when the home is disapproved for placement and the reasons for such. Any action that the parent may take to correct a deficiency is included.

(D) Emergency furloughs of youth with a current disapproved home may be granted if necessary.

(E) TYC parole staff will seek documented evidence of relevant problems found by another agency to determine if disapproval criteria exist.

(F) If the youth is under 18 years of age and will not be returning home, staff will seek assistance from the parent(s) in locating a relative who might be willing to have the youth placed in their home. If the home of the relative is approved, a youth may be placed in the home unless the parent(s) strongly objects to such placement in which case alternatives are sought. When a suitable relative cannot be located, an alternative program placement will be required.

(3) Alternative Home Placement for Youth at the Age of 18 and over with an Approved Home with Objections or a Disapproved Home Placement.

(A) For youth at the age of 18 and over whose parent/guardian has refused placement, the parole officer may place the youth in an approved home location of a non-relative. If the parent/guardian has an objection to the non-relative placement, the objections will be considered in the final decision, however, placement may still occur in spite of the parental objections.

(B) An alternative home placement for youth at the age of 18 and over shall be considered approved unless one or more of the following criteria exist, and can be documented:

(i) there is physical absence of a dwelling;

(ii) the legal head of household is unwilling to allow youth to live in the home;

(iii) the youth is a sex offender and the victim or potential victim presently resides in the home and requirements for placement have not been met as per §87.91 of this title;

(iv) the individuals residing in the home are on adult probation or parole and are not related to the youth;

(v) there is documented evidence that the individual(s) residing in the home have had negative and/or unsafe influence or impact on the youth.

(C) When an alternative home placement cannot be approved, the assigned parole officer shall immediately inform the residential PSW so that a second viable alternative home placement may be identified.

§85.75. Temporary Admission Awaiting Permanent Placement.

(a) Purpose. The purpose of this rule is to provide for temporary placement for a youth whose assigned placement is no longer a valid placement but a new placement has not been secured.

(b) Applicability. This rule does not apply to placement as detention in a Texas Youth Commission (TYC) high restriction facility. See §97.43 of this title (relating to Institution Detention Program).

(c) Staff may place a youth temporarily at the Marlin Orientation and Assessment Unit (MOAU) while waiting for assignment to a permanent placement if no disciplinary hearing is involved and if no alternative temporary placement within the youth's placement region can be found.

(d) A youth may remain at the unit as a temporary admission for up to 14 days. Extensions may be granted.

(e) The youth will be assigned a caseworker and will participate in regular activities at the unit.

§85.79. Parole of Undocumented Foreign Nationals

(a) Purpose. The purpose of this rule is to establish procedures whereby the Texas Youth Commission (TYC) works with United States Immigration and Customs Enforcement (ICE) for parole release of youth who are undocumented foreign nationals. No youth who are undocumented foreign nationals shall be detained in a secure facility for the sole purpose of deportation.

(b) Applicability. Procedures herein apply to all programs releasing TYC youth who are undocumented foreign nationals.

(c) Explanation of Terms Used.

(1) Undocumented Foreign Nationals--youth who do not have legal residence in the United States as determined by the ICE.

(2) Primary Service Worker (PSW)--the generic title given to persons at each TYC operated institution or residential contract care program who are assigned the primary responsibility for the case work for individual youth and for the administration of the case management standards. These are usually caseworkers, parole officers, and quality assurance specialists. Other designated staff in the system may also be considered as a PSW.

(d) Undocumented foreign nationals will not be placed in a minimum restriction parole location (home or home substitute) until a copy of the referral letter from the residential program to ICE is received by the assigned parole officer.

(e) In anticipation of completion of required release criteria and not less than 45 days prior to anticipated release date, the releasing authority shall inform ICE of the pending release of any undocumented foreign national youth and request a residency and deportation status determination within 15 days of receipt of notification. Forty-five (45) days before parole release the TYC staff of the releasing program shall:

(1) complete the parole release packet and schedule a date for release;

(2) send to the ICE in the region written notice of the release date, request for confirmation of the date and of transportation within 15 days of receipt of notification, and request that ICE meet with the youth prior to the date; and send a copy of the notice to the receiving PSW;

(3) notify the receiving PSW and appropriate consulate of release arrangements and all pertinent information; send the family notification of parole release, and make reasonable attempts to provide translation where necessary; and

(4) send notification of parole release to the appropriate authorities.

(f) On the day of parole release, ICE is responsible for transporting the youth to a port of entry.

(g) If the release of a youth is canceled for any reason, the releasing program shall immediately notify ICE, receiving PSW, and other affected parties.

(h) If the youth is not deported by ICE or if ICE fails to respond within 15 days of receipt of notification with a date of transportation, the receiving PSW and institutional placement coordinator will proceed with placement options at least 30 days prior to the release date.

(i) The case of a deported youth must be transferred to a designated caseload and supervised by a parole officer responsible for the youth in the committing county.

§85.85. Interstate Compact for TYC Youth.

(a) The Texas Youth Commission (TYC) staff complies with rules of the Uniform Interstate Compact on Juveniles (ICJ) enacted by the Texas Legislature in 1965, now codified as Chapter 60, Texas Family Code. The executive director of TYC is the compact administrator, appointed by the Governor of Texas. The deputy administrator, interstate compact on juveniles, is responsible for the daily operations of the Compact. ICJ staff are responsible for ensuring that supervision services are provided to TYC youth who move to other states. TYC staff are responsible for providing supervision services to parolees who move to Texas and work with the Texas ICJ office in the return to Texas of TYC absconders and escapees who are found in other states.

(b) Procedures are consistent with procedures in Chapter 117 of this title (relating to Interstate Compact on Juveniles).

§85.95. Discharge/Transfer of Custody.

(a) Purpose. The purpose of this rule is to establish criteria for discharge from agency jurisdiction for any youth committed to the Texas Youth Commission (TYC).

(b) Non-sentenced offenders shall by law, be discharged prior to the youth's 21st birthday.

(c) Sentenced offenders shall by law, be transferred from TYC's custody no later than the youth's 21st birthday.

(d) Youth may be recommended for early discharge when specific criteria have been met. Discharge criteria shall be applied according to classification or to special circumstance. Eligibility for discharge according to classification is controlled by the most serious offense for which the youth has ever been classified.

(e) Discharge Criteria.

(1) Classification.

(A) A sentenced offender youth shall be discharged from TYC jurisdiction when one of the following occurs:

(i) expiration of the sentence imposed by the juvenile court unless under concurrent commitment orders as specified in §85.59 of this title (relating to Program Completion for Sentenced Offenders Under Age 19), §85.61 of this (relating to Program Completion for Sentenced Offenders Age 19 or Older) and §85.69 of this title (relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder). Time on the sentence includes the time spent in detention in connection with the committing case plus time spent at TYC under the order of commitment:

(I) Time spent in detention in connection with the committing case includes all time in detention from the time of arrest

for the committing offense until admission to TYC, including pre-hearing detention for adjudication/disposition of the offense or for modification of the disposition, but excluding detention time that is ordered as a condition of probation.

(II) For youth committed under concurrent determinate and indeterminate commitment orders, refer to §85.59 of this title, §85.61, and §85.69 of this title.

(ii) the youth is transferred to TDCJ consistent with §85.61 of this title, §85.69 of this title, and §85.65 of this title (relating to Transfer of Sentenced Offenders to TDCJ-ID).

(B) Unless the youth is subject to a determinate sentence, a youth ever classified as a Type A violent offender shall be discharged on:

(i) the day before the 21st birthday, if the youth is assigned to a residential placement; or

(ii) the last working day prior to the 21st birthday, if the youth is assigned to a non-residential placement.

(C) Youth classified as a Type B violent offender, chronic serious offender, controlled substance dealer, or firearms offender and never classified as Type A violent or sentenced offender, shall be discharged:

(i) when the youth:

(I) completes 12 consecutive months on parole status in the home or home substitute;

(II) has had no delinquency adjudications or criminal convictions during the period;

(III) has no pending delinquency petitions or criminal charges;

(IV) is on minimum supervision level; and

(V) has had a positive parole adjustment, as defined in this policy; or

(ii) on the day before the 21st birthday, if the youth is assigned to a residential placement; or

(iii) on the last working day prior to the 21st birthday, if the youth is assigned to a non-residential placement.

(D) General offenders and violators of CINS probation and never classified as Type A violent or sentenced offender, shall be discharged:

(i) when the youth:

(I) completes the initial six (6) consecutive month period or nine (9) consecutive months on parole status in the home or home substitute;

(II) has had no delinquency adjudications or criminal convictions during the period;

(III) has no pending delinquency petitions or criminal charges;

(IV) is on minimum supervision level; and

(V) has had a positive parole adjustment as defined in this policy; or

(ii) when the following occurs after a youth reaches 20 years and six (6) months of age:

(I) 30 days on parole status; and

(II) two (2) face-to-face contacts within 30 days; and

(III) no pending criminal charges; or

(iii) on the day before the 21st birthday, if the youth is assigned to a residential placement; or

(iv) on the last working day prior to the 21st birthday, if the youth is assigned to a non-residential placement.

(2) Special Circumstances.

(A) Youth of any classification except sentenced offenders shall be discharged under the following circumstances:

(i) court ordered reversal of commitment;

(ii) the youth being sentenced to TDCJ--Institutional Division;

(iii) enlistment in the military;

(iv) closing of records following a youth's death or recommitment;

(v) discharge by the executive director or his designee for any other reason, such as an illness or injury which prevents a youth's return to active program participation;

(vi) youth who have completed length of stay requirements and who are unable to progress in the agency's rehabilitation programs because of mental illness or mental retardation as specified in §87.79 of this title (relating to Discharge of Mentally Ill and Mentally Retarded Youth).

(B) Youth placed out of the state who are of any classification except sentenced offender may be discharged when requested by the placement state for satisfactory adjustment or when court action is taken by the placement state in accordance with §85.85 of this title (relating to Interstate Compact for TYC Youth).

(C) Youth of any classification except sentenced offender and Type A violent offender shall be discharged under the following circumstances:

(i) placement on adult probation for conduct which occurred while on parole status; or

(ii) sentenced for a minimum of six (6) months in a state or county jail as part of the disposition of a criminal case.

(D) Youth may be discharged for special circumstance, other than those addressed here, if approved by the executive director.

(f) Positive Parole Adjustment. For purposes of discharge, positive parole adjustment shall be shown by documentation that a youth:

(1) has completed ICP objectives including substantial completion of parole phase of Resocialization and community service requirements; and

(2) has, for 90 consecutive days, been:

(A) enrolled and participating in an appropriate educational or training program; or

(B) satisfactorily employed.

(g) Waiver. Youth of any classification except sentenced offender and Type A violent offender who are age 18 or older may be discharged prior to completion of discharge criteria for the purpose of obtaining services that cannot be obtained for a juvenile. Such early

discharge must be justified to and approved by the deputy executive director.

(h) A youth's primary service worker (PSW) shall immediately notify the youth of the discharge. The PSW shall provide the youth a written explanation on procedures for sealing records utilizing the Sec. 58.003 Sealing of Files and Records form and a copy will be provided to the parent/guardian or custodian.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

TRD-200500300
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 424-6301

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CHAPTER 87. TREATMENT
SUBCHAPTER B. SPECIAL NEEDS OFFENDER PROGRAMS

37 TAC §87.75, §87.79

The Texas Youth Commission (the commission) proposes amendments to §87.75, concerning Mentally Retarded Offender Program, and §87.79, concerning Discharge of Mentally Ill and Mentally Retarded Youth. The sections will be amended to incorporate updated references to sections in Chapter 85.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Neil Nichols, General Counsel, has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended sections will be the availability of up-to-date policy. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. No private real property rights are affected by adoption of the amendments.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The amendments are proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed amendments affect the Human Resources Code, §61.034.

§87.75. Mentally Retarded Offender Program.

(a) - (b) (No change.)

(c) Applicability.

(1) See §85.55 of this title (relating to Program Completion for Other than Sentenced Offenders). [~~(GAP) §85.29 of this title (relating to Program Completion and Movement of Other than Sentenced Offenders).~~]

(2) See §85.59 of this title (relating to Program Completion for Sentenced Offenders Under Age 19).

(3) See §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older).

(4) See §85.65 of this title (relating to Transfer of Sentenced Offenders to TDCJ-ID).

(5) See §85.69 of this title (relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder).

[~~(2) See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders).~~]

(6) [~~(3)~~] See [~~(GAP)~~] §87.79 of this title (relating to Discharge of Mentally Ill and Mentally Retarded Youth).

(d) Admissions.

(1) (No change.)

(2) Admission Process.

(A) If youth is referred from a facility other than the Marlin Orientation and Assessment Unit (MOAU), the action is considered an administrative transfer according to §85.45 of this title (relating to Movement Without Program Completion) [~~(GAP) §85.29 of this title~~].

(B) (No change.)

(e) (No change.)

(f) Release and Transition Options.

(1) Youth in the MROP who meet criteria for transfer or release according to §§85.55, 85.59, 85.61, 85.65, or 85.69 of this title [~~(GAP) §85.29 of this title or (GAP) §85.33 of this title~~] may be transitioned to a less restrictive setting or paroled to the community.

(2) - (3) (No change.)

§87.79. Discharge of Mentally Ill and Mentally Retarded Youth.

(a) (No change.)

(b) Applicability.

(1) Requirements in this policy do not apply to sentenced offender youth. See §85.59 of this title (relating to Program Completion for Sentenced Offenders Under 19), §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older), §85.65 of this title (relating to Transfer of Sentenced Offenders to TDCJ-ID), and §85.69 of this title (relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder). [~~See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders) for policies relating to sentenced offenders.~~]

(2) See §85.95 [~~(GAP) §85.61~~] of this title (relating to Discharge/Transfer of Custody) for discharge requirements for youth qualified herein and all other TYC youth.

(c) - (f) (No change.)

(g) Procedure for Discharge of Youth with Mental Disability.

(1) Mental Illness.

(A) For youth who meet discharge criteria for mental illness and not already receiving court-ordered mental health services, a TYC psychiatrist shall examine the youth to determine if he/she meets eligibility criteria for court-ordered mental health services listed in §574.034, Health and Safety Code.

(i) (No change.)

(ii) If the youth does meet criteria for court-ordered mental health services, the agency will file a sworn application for such services as provided in Subchapter C, Chapter 574, Health and Safety Code.

(I) The application for court-ordered services shall be filed in the youth's committing county, where the youth resides, or where the youth is found for determination of appropriate mental health services. Also see [~~(GAP)~~] §87.69 of this title (relating to Commitment to State Mental Hospitals) for relevant procedures.

(II) (No change.)

(B) If a child is already receiving court-ordered mental health services, discharge is effective immediately upon becoming eligible for discharge under subsection (f) of this section [~~policy~~].

(C) - (E) (No change.)

(2) Mental Retardation.

(A) If a child is not receiving mental retardation services, but meets discharge criteria for mental retardation under subsection (f) of this section [~~policy~~] and under Chapter 593, Health and Safety Code, the agency will determine if the child is mentally retarded and notify the Mental Retardation Authority (MRA) in the child's home county and provide a copy of the determination report.

(B) - (C) (No change.)

(D) If the child is already receiving mental retardation services, discharge is effective immediately upon becoming eligible for discharge under subsection (f) of this section [~~policy~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

TRD-200500301
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 424-6301

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CHAPTER 95. YOUTH DISCIPLINE
SUBCHAPTER A. DISCIPLINARY PRACTICES

37 TAC §§95.7, 95.9, 95.11, 95.17

The Texas Youth Commission (the commission) proposes amendments to §95.7, concerning Reclassification Consequence; §95.9, concerning Parole Revocation Consequence; §95.11, concerning Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence; and §95.17, concerning Behavior Management Program. The sections will be amended to incorporate updated references to sections in Chapter 85.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Neil Nichols, General Counsel, has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended sections will be the availability of up-to-date policy. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. No private real property rights are affected by adoption of the amendments.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The amendments are proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed amendments affect the Human Resources Code, §61.034.

§95.7. Reclassification Consequence.

(a) (No change.)

(b) Applicability.

(1) (No change.)

(2) Additional procedures and restrictions are applied prior to any movement of a sentenced offender youth. See §85.59 of this title (relating to Program Completion for Sentenced Offenders Under 19) and §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older). [~~See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders).~~]

(c) Explanation of Terms Used. A high risk offense--is any Category [~~category~~] I rule violation which may result in a classification other than general offender or violator of Conduct Indicating Need for Supervision (CINS) probation.

(d) - (e) (No change.)

(f) Restrictions.

(1) - (2) (No change.)

(3) The minimum length of stay assigned under this rule [~~policy~~] may be reduced based on the youth's behavior and progress toward goals.

§95.9. Parole Revocation Consequence.

(a) (No change.)

(b) Applicability.

(1) The due process necessary to effect this rule is found in [~~(GAP)~~] §95.51 of this title (relating to Level I Hearing Procedure).

(2) Additional procedures and restrictions are applied prior to any movement of a sentenced offender youth. See §85.59 of this title (relating to Program Completion for Sentenced Offenders Under 19) and §85.61 of this title (relating to Program Completion for Sentenced

Offenders Age 19 or Older). [See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders).]

(c) Explanation of Terms Used. A high-risk offense--is any Category [category] I violation which may result in a classification other than general offender or violator of Conduct Indicating a Need for Supervision (CINS) probation.

(d) Criteria and Disposition.

(1) Parole will be revoked if it is found at a Level I hearing that a youth has:

(A) - (B) (No change.)

(C) committed one [(1)] of the following Category [category] I rule violations as defined in [(GAP)] §95.3 of this title (relating to Rules of Conduct), and has previously been classified for a high-risk offense:

(i) - (viii) (No change.)

(2) Parole of a general offender or a violator of CINS probation is revoked if it is found at a Level I hearing that the youth has committed one [(1)] of the Category [category] I rule violations listed above; and

(A) - (B) (No change.)

(3) If extenuating circumstances are found incident to a high-risk offense, parole is revoked, but the high-risk classification may be waived pursuant to [(GAP)] §85.23 of this title (relating to Classification).

(4) If extenuating circumstances are found incident to any violation other than a high-risk offense, parole is not revoked. See extenuating circumstances discussed in [(GAP)] §85.23 of this title [(relating to Classification)].

(5) (No change.)

(e) (No change.)

§95.11. Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence.

(a) (No change.)

(b) Applicability.

(1) The due process necessary to effect this rule is found in [(GAP)] §95.55 of this title (relating to Level II Hearing Procedure).

(2) Additional procedures and restrictions are applied prior to any movement of a sentenced offender youth. See §85.59 of this title (relating to Program Completion for Sentenced Offenders Under 19) and §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older). [See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders).]

(c) Criteria and Disposition for Disciplinary Transfer, Disciplinary Assigned Minimum Length of Stay, and Demotion of One or More Behavior Phases for Youth on Institutional Status.

(1) If it is found at a Level II hearing that the youth has failed on two (2) or more occasions to comply with a written reasonable request of staff that is either present in the Individual Case Plan (ICP) or is validly related to previous high risk behavior, a youth may receive only one of the following consequences:

(A) - (B) (No change.)

(C) demoted one or more Resocialization [resocialization] phases in the behavior area.

(2) If it is found at a Level II hearing that the youth has committed any other category I rule violation, the youth may receive one or more of the following consequences:

(A) - (B) (No change.)

(C) demoted one or more Resocialization [resocialization] phases in the behavior area.

(d) Additional Disposition Options for Youth on Institutional Status. Pursuant to a Level II hearing herein, certain youth in TYC institutions or secure contract programs, who are assessed a disposition under this rule may also be assessed placement in the below disciplinary programs, but only if specific criteria have been met and if specifically requested (with notice to the youth) in the Level II hearing request pursuant to this policy.

(1) Aggression Management Program. A placement in the Aggression Management Program (AMP) may be requested for a youth who is currently assigned to a TYC operated institution under requirements of [(GAP)] §95.21 of this title (relating to Aggression Management Program). All policy and program requirements of [(GAP)] §95.21 of this title will apply to the assignment in AMP.

(2) Behavior Management Program.

(A) A placement in the Behavior Management Program (BMP) may be requested for certain youth under requirements of [(GAP)] §95.17 of this title (relating to Behavior Management Program). All policy and program requirements of [(GAP)] §95.17 of this title will apply to the assignment in a BMP.

(B) (No change.)

(e) Criteria and Disposition for Disciplinary Transfer and Disciplinary Assigned Minimum Length of Stay for Youth on Parole Status. A youth on parole status may be transferred into a placement of medium restriction and/or assigned a minimum length of stay only if it is found at the Level II hearing that the youth has committed one of the following Category [category] I rule violations as defined in [(GAP)] §95.3 of this title (relating to Rules of Conduct):

(1) - (8) (No change.)

(f) - (g) (No change.)

§95.17. Behavior Management Program.

(a) - (b) (No change.)

(c) Applicability.

(1) (No change.)

(2) This rule does not apply to:

(A) - (D) (No change.)

(E) the use of same or adjacent space when used specifically as temporary admission. See §85.31 [§85.41] of this title (relating to Temporary Admission Awaiting Transportation);

(F) (No change.)

(d) - (n) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

TRD-200500302

Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 424-6301

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CHAPTER 97. SECURITY AND CONTROL
SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §§97.37, 97.40, 97.43, 97.45

The Texas Youth Commission (the commission) proposes amendments to §97.37, concerning Security Intake; §97.40, concerning Security Program; §97.43, concerning Institution Detention Program; and §97.45, concerning Protective Custody. The rules will be amended to incorporate updated references to rules in Chapter 85.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Neil Nichols, General Counsel, has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended sections will be the availability of up-to-date policy. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. No private real property rights are affected by adoption of the amendments.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The amendments are proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed amendments affect the Human Resources Code, §61.034.

§97.37. Security Intake.

(a) (No change.)

(b) Applicability.

(1) This rule does not apply to:

(A) - (D) (No change.)

(E) the use of the same or adjacent space when used specifically as temporary admission. See §85.31 [~~§85.41~~] of this title (relating to Temporary Admission Awaiting Transportation); and

(F) (No change.)

(2) (No change.)

(c) - (f) (No change.)

§97.40. Security Program.

(a) (No change.)

(b) Applicability.

(1) This rule does not apply to:

(A) - (D) (No change.)

(E) the use of the same or adjacent space when used specifically as temporary admission. See §85.31 [~~§85.41~~] of this title (relating to Temporary Admission Awaiting Transportation);

(F) (No change.)

(2) - (3) (No change.)

(c) - (f) (No change.)

§97.43. Institution Detention Program.

(a) (No change.)

(b) Applicability.

(1) - (2) (No change.)

(3) This rule does not apply to:

(A) - (E) (No change.)

(F) the use of the same or adjacent space when used specifically as temporary admission. See §85.31 [~~§85.41~~] of this title (relating to Temporary Admission Awaiting Transportation); and

(G) (No change.)

(c) Explanation of Terms Used. Detention Review Hearing--the TYC Level IV hearing required by this rule [~~policy~~].

(d) - (e) (No change.)

(f) Detention Review Hearings Required For Any Youth Held In An Institution Detention Program.

(1) - (3) (No change.)

(4) A detention review hearing is not required for:

(A) (No change.)

(B) sentenced offenders awaiting a transfer hearing to TDCJ-ID as defined in §85.65 of this title (relating to Transfer of Sentenced Offenders to TDCJ-ID) and §85.69 of this title (relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder) [~~§85.33 of this title (relating Program Completion and Movement of Sentenced Offenders)~~], if the hearing date is set to take place within a reasonable period of time from the date of detention; or

(C) (No change.)

(5) - (7) (No change.)

(g) Release From Institution Detention.

(1) (No change.)

(2) For Youth Pending AMP Admission Approval.

(A) (No change.)

(B) Prior [~~If the youth is not released to AMP prior~~] to the 30th day following the date of the youth's Level I or II hearing, the youth will be released to BMP pursuant to subsection (f)(2) of §95.17 of this title or to the general population based on the decision of the superintendent or assistant superintendent, if:

(i) - (iii) (No change.)

(h) (No change.)

§97.45. Protective Custody.

(a) (No change.)

(b) Applicability.

(1) This rule does not apply to:

(A) - (D) (No change.)

(E) the use of the same or adjacent space when used specifically as temporary admission. See §85.31 [~~§85.41~~] of this title (relating to Temporary Admission Awaiting Transportation);

(F) (No change.)

(2) - (3) (No change.)

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2005.

TRD-200500303
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: March 6, 2005
For further information, please call: (512) 424-6301

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER F. REPORTING REQUIREMENT FOR A GENERAL-PURPOSE COMMITTEE

1 TAC §20.433

The Texas Ethics Commission adopts an amendment to §20.433, requiring general-purpose political committees to specifically identify expenditures made from corporate or labor organization political contributions for administrative and solicitation expenses. At its January 14, 2005, meeting the Texas Ethics Commission amended the proposed rule to add subsection (b) that designates July 1, 2005, as the effective date of the amendment. The rule is adopted with changes to the proposed text as published in the October 15, 2004, issue of the *Texas Register* (29 TexReg 9615) and will be republished.

The following comment was received regarding the adoption of the amendment to §20.433. Fred Lewis with Campaigns For People stated that he was in agreement with the amended rule.

The amendment to §20.433 is adopted under Government Code, Chapter 571, Section 571.062, which authorizes the Ethics Commission to adopt rules concerning the laws administered and enforced by the Ethics Commission.

§20.433. Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures.

(a) Semiannual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

(1) the full name of the general-purpose committee;

(2) the address of the general-purpose committee;

(3) the full name of the general-purpose committee's campaign treasurer;

(4) the residence or business street address of the general-purpose committee's campaign treasurer;

(5) the committee campaign treasurer's telephone number;

(6) the identity and date of the election for which the report is filed, if applicable;

(7) the full name of each identified candidate or measure or classification by party of candidates supported or opposed by the general-purpose committee and an indication of whether the general-purpose committee supports or opposes each listed candidate, measure, or classification by party of candidates;

(8) the full name of each identified officeholder or classification by party of officeholders assisted by the general-purpose committee;

(9) if the general-purpose committee supports or opposes measures exclusively, for each contribution accepted from a corporation as defined by § 20.1 of this title (relating to Definitions):

(A) the date each contribution was accepted;

(B) the full name of the corporation or labor organization making the contribution;

(C) the address of the corporation or labor organization making the contribution;

(D) the amount of the contribution; and

(E) a description of any in-kind contribution;

(10) for each political expenditure by the general-purpose committee that was made as a political contribution to a candidate, officeholder, or another political committee and that was returned to the general-purpose committee during the reporting period:

(A) the amount returned;

(B) the full name of the person to whom the expenditure was originally made;

(C) the address of the person to whom the expenditure was originally made; and

(D) the date the expenditure was returned to the general-purpose committee;

(11) for each person from whom the general-purpose committee accepted a political contribution other than a pledge or a loan of more than $50 in value, or political contributions other than pledges or loans that total more than $50 in value (or more than $10 for a general-purpose committee reporting monthly):

(A) the date each contribution was accepted;

(B) the full name of the person making the contribution;

(C) the address of the person making the contribution;

(D) the principal occupation of the person making the contribution;

(E) the amount of the contribution; and

(F) a description of any in-kind contribution;

(12) for each person from whom the general-purpose committee accepted a pledge or pledges to provide more than $50 in money or to provide goods or services worth more than $50 (more than $10 for a general-purpose committee reporting monthly):

(A) the full name of the person making the pledge;

(B) the address of the person making the pledge;

(C) the principal occupation of the person making the pledge;

(D) the amount of each pledge;

(E) the date each pledge was accepted; and

(F) a description of any goods or services pledged;

(13) the total of all pledges accepted during the period for $50 and less from a person, except for those reported under paragraph (12) of this section;

(14) for each person making a loan or loans to the general-purpose committee for campaign purposes if the total amount loaned by the person during the period is more than $50 (more than $10 for a general-purpose committee reporting monthly):

(A) the full name of the person or financial institution making the loan;

(B) the address of the person or financial institution making the loan;

(C) the amount of the loan;

(D) the date of the loan;

(E) the interest rate;

(F) the maturity date;

(G) the collateral for the loan, if any; and

(H) if the loan has guarantors:

(i) the full name of each guarantor;

(ii) the address of each guarantor;

(iii) the principal occupation of each guarantor;

(iv) the name of the employer of each guarantor; and

(v) the amount guaranteed by each guarantor;

(15) the total amount of loans accepted during the period for $50 and less from persons other than financial institutions engaged in the business of making loans for more than one year, except for those reported under paragraph (14) of this section;

(16) for political expenditures made during the reporting period that total more than $50 (more than $10 for a general-purpose committee reporting monthly) to a single payee:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the purpose of the expenditure, for example, the goods or services for which the expenditure was made;

(E) the amount of the expenditure; and

(F) indication for an expenditure paid in full or in part from corporations or labor organizations that it was paid from such sources.

(17) for each non-political expenditure made from political contributions:

(A) the date of each payment;

(B) the full name of the person to whom the payment was made;

(C) the address of the person to whom the payment was made;

(D) the nature of the goods or services for which the payment was made;

(E) the amount of the payment; and

(F) indication for an expenditure paid in full or in part from corporations or labor organizations that it was paid from such sources.

(18) for each candidate or officeholder who benefits from a direct campaign expenditure made by the committee:

(A) the name of the candidate or officeholder; and

(B) the office sought or held by the candidate or officeholder;

(19) for each political contribution from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(20) the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of $50 and less ($10 and less for a general-purpose committee reporting monthly);

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of $50 and less ($10 and less for a general-purpose committee reporting monthly); and

(E) the total amount of all political expenditures;

(21) if applicable, a statement that no reportable activity occurred during the reporting period; and

(22) an affidavit, executed by the campaign treasurer, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

(b) Subsections (a)(16)(F) and (a)(17)(F) take effect on July 1, 2005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2005.

TRD-200500278
David A. Reisman
Executive Director
Texas Ethics Commission
Effective date: July 1, 2005
Proposal publication date: October 15, 2004
For further information, please call: (512) 463-5800

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CHAPTER 34. REGULATION OF LOBBYISTS SUBCHAPTER E. ELECTRONIC FILING

1 TAC §34.91

The Texas Ethics Commission adopts new §34.91, concerning exemptions from the requirement to file lobby reports electronically. H.B. 1606, 78th Legislature, Regular Session, requires the Texas Ethics Commission to adopt rules under which a lobbyist may file on paper. At its January 14, 2005, meeting the Texas Ethics Commission amended the proposed rule to add the heading of Subchapter E, Electronic Filing to Chapter 34, Regulation of Lobbyists. The rule as published in the December 3, 2004, issue of the *Texas Register* was under Subchapter D, Lobby Activities Reports. The new subchapter was added to clarify that the rule also applies to other reports. The rule is adopted without changes to the proposed text as published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11207) and will not be republished.

No comments were received regarding adoption of the new rule.

The new section is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2005.

TRD-200500230
David A. Reisman
Executive Director
Texas Ethics Commission
Effective date: February 7, 2005
Proposal publication date: December 3, 2004
For further information, please call: (512) 463-5800

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CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1

The Texas Ethics Commission adopts an amendment to §50.1, to set the legislative per diem as required by the Texas Constitution, Article III, §24a. This section sets the per diem for members of the legislature and the lieutenant governor at $128 for each day during the regular session and any special session. The amendment is adopted without changes to the proposed text as published in the November 26, 2004, issue of the *Texas Register* (29 TexReg 10859).

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Texas Constitution, Article III, §24a, and the Government Code, Chapter 571, §571.062.

The amended section affects the Texas Constitution, Article III, §24, Article III, §24a, and Article IV, §17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2005.

TRD-200500214
David A. Reisman
Executive Director
Texas Ethics Commission
Effective date: February 3, 2005
Proposal publication date: November 26, 2004
For further information, please call: (512) 463-5800

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PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §251.6

The Commission on State Emergency Communications (CSEC) adopts amendments to §251.6, concerning guidelines for submission requests from regional planning commissions on strategic plans, amendments and allocation of funds with changes to the proposed text as published in the October 1, 2004, issue of the *Texas Register* (29 TexReg 9275).

This section is adopted as part of Rule Review of Chapter 251 pursuant to Government Code, §2001.039. The rule continues to be essential to the CSEC's operations and per statutory authority.

The amendment considers the requests for hearing amendments from Regional Planning Commissions at least four times a year on a schedule to be established by the Commission, with consideration of scheduling the reviews in each quarter of the fiscal year.

The CESC received comment from the Texas Association of Regional Councils (TARC) approving the revision to the rule to provide for Commission review of regional strategic plan amendments four times annually. TARC also commented that the Commission should consider revising the limits on allowable costs established for recording systems established in subsection (i) (2) of the rule. The CSEC will work with TARC to review current data for cost and size of recording systems; and notes that the rule currently provides that any region that has funding needs above the current parameters may submit an amendment request for Commission approval.

TARC also requested removal of the word "match" from the term "Personnel Match," shown in subsections (d)(4) and (e)(4) of the rule, under allowable costs for Use of Revenue in Certain Counties. The CSEC also proposes deletion of the word.

Comment was also received from CSEC's internal auditor, who proposed a revised phrasing of the last sentence of subsection (g)(2), regarding the establishment of four opportunities per year for regional amendments to be heard by the Commission. This would avoid a potential misinterpretation that four amendments

are required of the regions per year. CSEC staff recommends the internal auditor's version of the sentence.

The amendment is adopted pursuant to the Texas Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, and 771.075; and Title 1 Texas Administrative Code, Part 12, Chapter 251, Regional Plan Standards, which provide the Commission on State Emergency Communications with the authority to plan, develop, fund, and provide provisions for the enhancement of effective and efficient 9-1-1 service.

§251.6. Guidelines for Strategic Plans, Amendments, and Revenue Allocation.

(a) Purpose. The purpose of this rule is to provide the structure and guidelines for regional strategic plans, funding of the plans, and amendments to the plans.

(b) Background. As authorized by Chapter 771 of the Texas Health and Safety Code, the Commission on State Emergency Communications (Commission) may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. In accordance with Section 771.055 of the above chapter, such service implementation shall be consistent with regional plans developed by regional planning commissions (RPC). These regional plans must meet standards established by the Commission and "...include a description of how money allocated to the region under this chapter is to be allocated in the region." Section 771.057 addresses amendments to regional plans and indicates that such amendments may be adopted in accordance with procedure established by the Commission.

(c) Definitions. Unless the context clearly indicates otherwise, terms contained in this rule are defined as shown in Commission Rule 251.14, General Provisions and Definitions.

(d) Strategic Plan Levels. Regional strategic plans developed in accordance with Chapter 771, along with the commensurate allocation of the above described funds, shall reflect implementation consistent with the following four major strategic plan levels (in order of priority) for state appropriations years 2004-2005.

(1) Level I: The equipment, network, and database equipment and/or services that provide the essential elements of 9-1-1 service, including the maintenance and replacement of equipment.

(A) Network;

(B) Wireless Phase I;

(C) Database;

(D) Equipment Lease;

(E) Equipment Purchase;

(F) Language Line; and

(G) Equipment Maintenance.

(2) Level II: The activities, equipment, and/or services that directly support and enhance 9-1-1 call delivery and data maintenance for the level of service provided to the region.

(A) Database Maintenance;

(B) MIS;

(C) Mapped ALI;

(D) PSAP Room Prep;

(E) PSAP Training;

(F) Public Education; and

(G) Wireless Phase II.

(3) Level III: The activities, equipment, and/or services that provide auxiliary enhancements to the delivery of 9-1-1 calls and the level of service provided to the region.

(A) Network Diversity;

(B) Training Positions;

(C) Emergency Power;

(D) Recorders;

(E) Pagers;

(F) Ancillary Maintenance & Repair; and

(G) Other.

(4) Level IV: Use of Revenue in Certain Counties. The activities, equipment, and/or services that provide auxiliary enhancements to the 9-1-1 system of a county subject to Health and Safety Code, Chapter 771, with a population over 700,000, or the county that has the highest population within an RPC participating in the Commission program to include, but not limited to:

(A) Design of a 9-1-1 System;

(B) Purchase of Equipment;

(C) Maintenance of Equipment; and

(D) Personnel.

(e) New Strategic Plan Levels. Regional strategic plans developed in accordance with Chapter 771, along with the commensurate allocation of the above described funds, shall reflect implementation consistent with the following four major strategic plan levels (in order of priority) beginning state appropriations year 2006.

(1) Level I: The equipment, network, and database equipment and/or services that provide the essential elements of 9-1-1 service, including the maintenance and replacement of equipment.

(A) Network;

(B) Wireless;

(C) Database;

(D) Equipment Lease;

(E) Language Line; and

(F) Equipment Maintenance.

(2) Level II: The activities, equipment, and/or services that directly support and enhance 9-1-1 call delivery and data maintenance for the level of service provided to the region.

(A) Database Maintenance;

(B) MIS;

(C) Mapped ALI;

(D) PSAP Room Prep;

(E) PSAP Training; and

(F) Public Education.

(3) Level III: The activities, equipment, and/or services that provide auxiliary enhancements to the delivery of 9-1-1 calls and the level of service provided to the region.

(A) Network Diversity;

(B) PSAP Supplies; and

(C) Ancillary Maintenance & Repair.

(4) Level IV: Use of Revenue in Certain Counties. The activities, equipment, and/or services that provide auxiliary enhancements to the 9-1-1 system of a county subject to Health and Safety Code, Chapter 771, with a population over 700,000, or the county that has the highest population within an RPC participating in the Commission program to include, but not limited to:

(A) Design of a 9-1-1 System;

(B) Purchase of Equipment;

(C) Maintenance of Equipment; and

(D) Personnel.

(f) Strategic Plans. Regional strategic plans developed in compliance with Chapter 771 shall include a strategic plan that projects financial operating information at least two years into the future; and strategic planning information at least five years into the future.

(1) The Commission shall establish the format of strategic plans for the sake of identifying overall statewide requirements in its implementation.

(2) Strategic plans shall be consistent with the four major implementation priority levels identified above and with all applicable Commission policies and rules.

(3) An RPC shall submit financial reports at least quarterly on a schedule to be established by the Commission. The financial report shall identify actual implementation costs by county, strategic plan priority level and component.

(4) An RPC shall submit performance reports at least quarterly on a schedule to be established by the Commission. The performance report shall reflect the progress of implementing the region's strategic plan, including the status of equipment, services and program deliverables, in a format to be determined by the Commission.

(g) Amendments to Regional Strategic Plans.

(1) An RPC may make changes to its approved regional strategic plan to accommodate unanticipated requirements and/or to prevent disruption of its implementation schedule, contingent upon compliance with all Commission policies and procedures. Examples of occasions when an amendment must be submitted to the Commission include, but are not limited to:

(A) Requests for approval of items under Commission Rule 251.3, Use of Revenue in Certain Counties;

(B) Requests to shift budget authority from the Administrative budget to the Program budget, and vice versa;

(C) Requests to increase the total percentage of staff time charged to the 9-1-1 program (FTE), when the increase exceeds the total amount of time charged for all personnel funded with 9-1-1 funds in the current approved plan;

(D) Requests to add a call-taking position at a PSAP when the total number of call-taking positions for the region would increase;

(E) Requests for exceptions to Commission policy;

(F) Requests for additional funds; and

(G) As required by other Commission rule, or upon a request from the Commission.

(2) Requests for amendments to the regional plan shall be submitted in writing to the Commission. The documentation required for changes will be an amended budget, narrative, related worksheets and a letter indicating executive approval of the amendment according to Commission policy. The Commission shall take action, no fewer than four times annually, on any Regional plan amendment request submitted for approval.

(3) Emergency situations requiring amendments to regional plans that require additional funding may be presented to the Commission for review and consideration contingent upon the availability of such funds within level priorities as established by the Commission.

(h) Allocation of Revenue.

(1) Service Fee allocation - Consistent with sections 771.056 (d), and 771.078 the Commission shall allocate, by contract, service fee revenue to RPCs contingent on the availability of appropriated funds.

(2) Equalization Surcharge Funds

(A) Within the context of Section 771.056(d), the Commission shall consider any revenue insufficiencies to represent need for equalization surcharge funding support.

(B) Consistent with this rule, the Commission shall allocate, by agreement, equalization surcharge funds and service fees to RPCs based upon statewide strategic plan contingent on the availability of appropriated funds over a two-year period.

(C) The Commission may allocate equalization surcharge to an emergency communication district (District) based on District requests and availability of appropriated funds.

(D) Equalization surcharge funds shall be allocated first to eligible recipients requiring such funds for administrative budgetary purposes, followed by Level I, II, and III activities in that order.

(E) If sufficient equalization surcharge funds are not available to fund all RPC strategic plan and District requests, funds shall be allocated to provide a consistent level of 9-1-1 service throughout the State of Texas in accordance with the priority levels described. Such allocation methods may include, but are not limited to, one or more of the following:

(i) In reverse order of priority, reducing the number of priority level components supported with equalization surcharge funds;

(ii) Requesting that regional strategic plans be adjusted to allow for more implementation time as appropriate; and/or

(iii) In order of priority, proportionally allocating available funds among requesting agencies.

(F) The Commission may elect to hold a balance of equalization surcharge funds in reserve for emergencies and other contingencies.

(i) Funding Parameters. The Commission will look favorably on plan amendments for tandem and/or database service arrangements and ancillary equipment that will improve the effectiveness and reliability of 9-1-1 call delivery systems. This will include the following when the equipment is for 9-1-1 call delivery: surge protection devices, uninterrupted power source (UPS), power backup, voice recorders, paging systems for 9-1-1 call delivery, security devices, and other back-up communication services. Regions shall refer to the strategic planning guidelines for instructions as to the appropriate budget line item to which the costs for purchase and maintenance of these items should be assigned.

(1) Paging Systems. Funding for the paging systems may be approved when such systems are the most effective means of 9-1-1 call delivery and they do not replace other paging or radio alerting systems. Funding for paging will be limited to systems, where alternative systems or the systems now in use cause significant delay in 9-1-1 call delivery and where existing radio systems can be modified to accommodate paging. Funding for pagers (receivers) will be limited to three, providing pagers to only necessary core responders within an organization (e.g., in a 15-member volunteer emergency medical group, only the on-call ambulance driver and one or two attendants would be furnished pagers).

(2) Voice Recording Equipment. Voice loggers may be approved when the primary use of the equipment is in support of the 9-1-1 call-taking and call-delivery function. Extra capacity on such systems may be used for other public safety functions (such as dispatch); however, 9-1-1 funding will not be authorized for systems whose capacity clearly exceed actual or anticipated 9-1-1 requirements. Shared funding of larger systems to accommodate both a 9-1-1 PSAP and a PSAP operating agency's other needs will be considered on a case-by-case basis. Other considerations include:

(A) The Commission will normally fund voice recording capability in a PSAP to record the conversation on each answering position used to answer emergency calls on a regular basis. (This means one recording channel per 9-1-1 answering position instead of one channel per incoming line.)

(B) The Commission will also fund recording capability to record the transfer of an emergency call from the PSAP first answering the call to the agency that is responsible for providing the required emergency services. This recording capability will be limited to the minimum amount required to record the transfer of the caller and relaying of information to the service provider.

(C) The Commission will fund the purchase of voice recorders as justified, to record 9-1-1 call delivery. Call volumes requiring recording in excess of 90 minutes per day will normally be required to justify larger systems.

(D) The funding of recording devices to transfer information from another recorder will be approved only upon specific justification of need.

(E) Funding for search capability for recorders will be limited to the ability to locate an event by date and time.

(F) The Commission will not normally fund the purchase of both voice logging recorders and instant playback recorders in the same location.

(G) When the operator of a 9-1-1 PSAP and the providers of emergency services desire to use the same recording equipment funded by regional strategic plan, the following guidelines will apply to determine the amount to be funded by the Commission:

(i) When the minimum size of recorder that can be purchased to serve the PSAP provides more channels than are needed by the PSAP to record the delivery of 9-1-1 calls, the other agency may use the extra channels and all funding will be provided by the Commission.

(ii) When the PSAP requires a given size of recording equipment, and the other agency requires additional channels, the Commission will fund the size of recording equipment needed to record only the delivery of 9-1-1 calls, and the other agency will fund all additional equipment.

(iii) When the recording requirements of the other agency requires additional features or capabilities than would be required by the PSAP alone, the Commission will fund the equivalent amount of the system needed to serve the 9-1-1 functions of the PSAP alone. For instance, if the PSAP could use a recording system to record the delivery of 9-1-1 calls, but another agency needs to record a radio channel that requires the capacity of a larger recorder, the Commission will fund the equivalent cost of the smaller system.

(H) To assist the Commission in reviewing and approving requests for funding for voice recording devices for 9-1-1 call delivery, requests for funding should include a worksheet, provided by the Commission, for each PSAP location.

(I) In reviewing requests for recording systems, the Commission will award funding, when justified, for the actual costs of basic recording systems not to exceed $10,000 on 4-channel or equivalent systems, and not to exceed $20,000 on up to 10-channel or equivalent recording systems. Requests for any other recording systems will require separate approval by the Commission.

(J) The Commission will consider funding of recording capabilities greater than those suggested by the guidelines when sufficient justification is provided as part of a regional strategic plan.

(j) Emergency Power Equipment. Each PSAP location should be evaluated by the RPC to determine if an emergency power system is required to insure the ability to answer 9-1-1 calls in the event that the standard power supply is interrupted. A PSAP that receives a relatively small number of emergency calls per day may be able to provide acceptable service without the availability of ANI or ALI for short periods of time. If the same PSAP is located in a location that is subject to prolonged power outages, it may need emergency power sources. Other considerations include:

(1) Where conditions exist that indicate a need for emergency power systems to support 9-1-1 call delivery, UPS should be considered as the emergency power system. Emergency generators (power backup) should be approved only in locations with a documented history of or potential for extended interruptions of commercial power supplies. Generally, 9-1-1 funding will not be used to provide both a generator and UPS. At least 75 percent of the capacity of any UPS system or generator funded should directly support an existing (or planned) 9-1-1 system.

(2) Each request for UPS must include a worksheet showing the calculations used to determine the system size and batteries required. This worksheet must identify all equipment to be powered and the operating voltage and current drain of each piece of equipment. The request for UPS must identify the load capacity of the system requested and the length of time the batteries will operate the PSAP 9-1-1 equipment. The request should also indicate whether the 9-1-1 equipment has any built-in UPS capability.

(3) The length of time that a UPS battery will be required to provide emergency power is a major factor in determining the cost of the UPS system. Each request for UPS must provide information justifying the size of the batteries requested. Information concerning the history of power failures at the PSAP location and the average time to restore power should be obtained from the local power company.

(4) If the history of power failures, or the expected restoration time, is more than can be economically justified for UPS batteries, an emergency generator can be considered. Any request for an emergency generator, in addition to a UPS, shall include a comparison of the cost of a UPS with sufficient batteries to the cost of the combination of the UPS and an emergency generator.

(5) There may be circumstances that justify the installation of an emergency generator (backup power), in addition to an UPS, as the primary system for a PSAP location. In these cases, the request for the emergency generator must include an explanation and comparison of the relevant costs.

(6) When the operator of a 9-1-1 PSAP and the providers of emergency services desire to share the emergency power system funded by the Commission, the following guidelines will apply to determine the amount to be funded by the Commission:

(A) When the minimum size of emergency power system that can be purchased to serve the PSAP provides more capacity than is needed by the PSAP, the other agency may use the extra capacity and all funding will be provided by the Commission.

(B) When the PSAP requires a given size of emergency power system, and the other agency requires additional capacity, the Commission will fund the size of emergency power equipment needed to supply the PSAP alone and the other agency will fund all additional capacity.

(7) Funding may be approved for surge protection devices when they are used for protection of 9-1-1 specific electronic equipment. Documented justification must be provided.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2005.

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Paul Mallett
Executive Director
Commission on State Emergency Communications
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For further information, please call: (512) 305-6933

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1 TAC §251.14

The Commission on State Emergency Communications (CSEC) adopts new §251.14, concerning general provisions and definitions, without changes to the proposed text as published in the October 1, 2004, issue of the *Texas Register* (29 TexReg 9279).

The new adopted section contains all definitions to words and terms used in the other rules within Chapter 251. This consolidation of provisions and definitions helps reduce unnecessary duplication and ensures consistency of definitions.

No comments were received regarding adoption of the new section.

The new section is adopted under Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056, 771.057, 771.071, 771.072, 771.075, and 771.0751, 771.079; and Title 1 Texas Administrative Code, Part 12, Chapter 251, Regional Plan Standards, which provide the Commission on State Emergency Communications with the authority to plan, develop, fund, and provide provisions for the enhancement of effective and efficient 9-1-1 service.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Paul Mallett
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CHAPTER 255. FINANCE

1 TAC §255.4

The Commission on State Emergency Communications (CSEC) adopts amendments to §255.4, defining the terms "local exchange access line" and "equivalent local exchange access line," without changes to the proposed text as published in the October 1, 2004, issue of the *Texas Register* (29 TexReg 9284).

This section is adopted as part of Rule Review of Chapter 255 pursuant to Government Code §2001.039, and as part of the annual review required by Health and Safety Code §771.063(c). The rule continues to be essential to CSEC's operations.

CSEC received written comments on the proposed amendments from a group of Emergency Communications Districts (Districts), Southwestern Bell Telephone, L.P. d/b/a SBC Texas (SBC), and AT&T Communications of Texas, L.P. (AT&T). The Districts support the proposed amendments.

SBC generally agrees with the amendments but recommended that the option to continue using the federal subscriber line charge (SLC) methodology be eliminated. According to SBC, the SLC methodology will lead to inconsistent application of the rule because it allows carriers to subjectively determine with respect to channelized services such as T-1 or ISDN the number of lines that fit the definition. CSEC recognizes the possibility SBC identifies and addresses it by limiting use of the SLC methodology to a carrier that bills SLC charges on "all its retail lines and services to all its end user customers" - without exception. CSEC will re-evaluate the continued use of the SLC methodology during the next annual review of §255.4.

AT&T commented on the application of the rule when service is provided using internet protocol (IP) applications such as voice over internet protocol (VoIP). AT&T is concerned that when the IP service provider and the underlying facility provider are not the same entity that either both entities will owe the service fee, resulting in double taxation, or the facility owner will be responsible for the fee notwithstanding that it may be unaware of the kind of application being deployed or even whether 9-1-1 access is available to the subscriber. The terms as defined impact IP-based applications, including VoIP, only in instances where access to 9-1-1 is provided through a "permissible interconnection to the dedicated 9-1-1 network." At present, only an IP-based service provider using its own facilities is capable of providing emergency service connection to the dedicated 9-1-1 network.

The amendment is adopted pursuant to Texas Health and Safety Code, §§771.051, 771.063, 771.071, 771.0711, and 771.075;

and Title 1 Texas Administrative Code, Part 12, Chapter 255, Finance, which authorize CSEC to impose statewide 9-1-1 emergency service fees on each local exchange access line or its equivalent.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Paul Mallett
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Commission on State Emergency Communications
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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7. PESTICIDES

SUBCHAPTER C. LICENSING

4 TAC §7.27

The Texas Department of Agriculture (the department) adopts new §7.27, concerning pesticide applicator business registration and vehicle identification for certain pesticide applicator businesses, with changes to the proposal published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9756).

The new section is adopted to prevent wasted manpower by making it possible to determine if an applicator is licensed by visual inspection of the applicator's vehicle. Some pesticide applicators that perform pest control in the plant pest and weed control license category are licensed with the Structural Pest Control Board (SPCB) and others are licensed with the department. Those applicators licensed with the SPCB are required to display license information on their vehicles, while those licensed with the department currently are not. This causes confusion and many times applicators licensed with the department are mistakenly reported to SPCB for operating without a license. New §7.27 will make identification of applicators licensed by the department in the plant pest and weed control license category easier and will eliminate unnecessary confusion for both the SPCB and the public and the resulting waste of investigation and inspection resources. Additionally, the adopted section, at subsection (a), clarifies that pesticide applicator businesses must register with the department. The section is adopted with changes to the proposal that eliminate, at subsections (b) and (f), the right-of-way pest control license category, from coverage under the section and clarify, by the deletion of proposed subsection (b)(1), that the section is only intended to cover persons making applications under the plant pest and weed control category, and not those performing other duties.

New §7.27 provides registration requirements for pesticide applicator businesses registered with the department in the plant pest and weed control license category. In addition, the new section provides for the issuance of a decal to registrants by the department and provides requirements for the placement of decals on certain applicator vehicles.

Comments on the proposal were received from the Texas Ag Industries Association (TAIA), the Texas Vegetation Management Association (TVMA), the Texas Pest Control Association (TPCA), CTN Educational Service, Chemical Weed Control of Brownfield and Quilla, and McCoy Tree Surgery.

The TAIA commented that the rule is not needed and would place a burden on TDA and applicators covered by the rule. The department believes the rule is needed to help distinguish licensed applicators from unlicensed applicators and will not place a burden on covered applicators since there is no cost to the applicator for the decal.

Several commenters, including the TVMA, McCoy Tree Surgery and Chemical Weed Control, requested that the department remove the right-of-way applicators from the requirements. The primary reasons given are that most right-of-way applications are made in non-urban areas of the state; that commercial right-of-way applicators have a high vehicle replacement rate and vehicles sold to non-licensees will continue to have the decal on them; that commercial right-of-way applicators work in multiple states and vehicles based in other states might work temporarily in Texas; that it would be very difficult for the department to monitor the number of decals being used on vehicles actually used for applications; and, that many commercial right-of-way applicators perform minimal pesticide applications while they provide other services. The department agrees with this recommendation for the reasons stated, and has excluded applications in the right-of-way pest control category from the requirements in the final rule.

Another request was to include the non-commercial applicators that are licensed with the department and apply general use pesticides. The commenter argues that non-commercial applicators should be included because they also do applications that are covered by the proposal. The department disagrees with this request. The department has authority to license applicators to apply restricted-use pesticides, state-limited-use pesticides, and regulated herbicides. These non-commercial applicators that are licensed with the department have done so under an exemption in the SPCB law. The department has excluded these non-commercial applicators from the requirements of this rule because there is no requirement for them to be licensed under any other existing department rules.

TPCA requested that the department make the size of the lettering on the decals at least 2 inches. TPCA argues that making the lettering larger would make vehicles more easily identifiable or readable and that 2-inch letters and numbers have been successfully used by the SPCB and other state agencies. While the department does not disagree that larger letters would be more easily read, the cost of producing a decal with 2-inch letters is cost prohibitive if, as planned, the department will be furnishing the decals at no cost to covered licensees.

New §7.27 is adopted under the Texas Agriculture Code §12.016, which provides that the Texas Department of Agriculture with the authority to adopt rules necessary to administer its duties under the Code; and the Code, §76.004 and §76.104, which provide the Texas Department of Agriculture with the authority, after notice and hearing, to adopt rules for carrying

out Chapter 76 of the Code, relating to pesticide and herbicide regulation.

§7.27. Applicator Business Registration and Vehicle Identification for Applicator Businesses.

(a) Each applicator business shall register with, and obtain a registration number from the department.

(b) Each applicator business registered with the department and which employs any commercial pesticide applicators certified in, and making for-hire applications in, the plant pest and weed control license use category (category 3(A)) listed in §7.21 of this title (relating to Applicator Certification) shall prominently affix an applicator business vehicle identification decal issued and provided by the department on each motor vehicle used by an employee of the applicator business to access, for the purpose of making an application, the customer's property that has been, is, or will be treated with pesticides by the licensed applicator or a person supervised by the licensed applicator.

(c) The term "prominently affix" as used in this section means permanently affixed to the rear window, front fender, or front door panel of the vehicle in a location readily accessible to and viewable by members of the public and department personnel.

(d) The term "motor vehicle" as used in this section means any wheeled or tracked vehicle, machine, tractor, trailer, or semitrailer, but not aircraft, propelled or drawn by mechanical power and used to transport a person or thing.

(e) A motor vehicle is not required to have the decal specified by subsection (b) of this section affixed to it if the vehicle is attached to, pulled by, or transported by another motor vehicle with a required decal affixed.

(f) A motor vehicle is required to have the decal specified by subsection (b) of this section affixed to it only when the activities in subsection (b) of this section are related to a category 3A application.

(g) The decal required by subsection (b) of this section may be obtained by submitting a request to the department on a form prescribed by the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Department of Agriculture
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TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §§214.1 - 214.13

The Board of Nurse Examiners (Board) adopts new 22 Texas Administrative Code Chapter 214, §§214.1 - 214.13, concerning Vocational Nursing Education. The new sections are adopted without changes to the proposed text as published in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10335).

Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. House Bill 1483 changed the Board's function of "accrediting" nursing education programs to "approving" nursing education programs. Concurrent with this adoption is the repeal of the existing Chapter 233 (Education) which addresses vocational nursing education.

The language in Chapter 214 addresses educational standards specific to vocational nursing education. The proposed new chapter has been reorganized to clearly reflect regulation of the same 13 critical sections of nursing education as currently outlined in Chapter 215 (professional nursing education) and Chapter 219 (advanced practice nursing program). Consistency in rule language has been improved. Major revisions will provide positive changes for vocational nursing education. A petition process for Director and faculty has been added which will mirror the existing process found in Chapter 215. The required NCLEX-PN pass rate has been increased to 80% from the current 75%. This will be consistent with the required NCLEX-RN pass rate for professional nursing programs. The student/faculty ratio in the clinical area has been reduced to 10:1 from the current 12:1 ratio which is consistent with requirements in Chapter 215. This new ratio, however, will not be implemented until the vocational schools begin the admission process for the Fall 2005 incoming class. The requirement for faculty to obtain 30 hours of continuing education every two years was deleted. Faculty will now only be required to meet the current licensure requirement for 20 hours of continuing education every two years. "Full approval with Warning" was added to the current two types of approval status, "full" and "conditional," to provide consistency with the language and requirements in Chapter 215.

The Board received comments from the following interested groups or associations: Texas Association of Community Colleges (TACC), Frank Phillips College administration, Lamar State College-Port Arthur administration, Texas State University System administration, Cisco Junior College nursing administration, Laredo Community College nursing administration and Central Texas College nursing administration.

The following comments were received regarding §214.10(j)(1) which states in part that "[W]hen a faculty member is the only person officially responsible for a clinical group, then the group shall total no more than ten students. Patient safety shall be a priority and may mandate lower ratios, as appropriate...." The current requirements in Chapter 233 reflect a 1:12 faculty/student ratio in the clinical area. Three comments supported the change to decrease the clinical ratio, but four comments opposed the proposed decreased clinical ratio citing the following supporting rationale: 1) expected negative economic impact on public community colleges particularly in light of the decrease in formula funding; 2) expected difficulty in employing additional faculty due to the acute shortage of nursing faculty; 3) anticipated reduction in admissions to VN programs to accommodate the rule change; 4) VN graduates have been successful on the licensing exam

with the existing clinical ratio; 5) differences in the level of expected competencies places the LVN under the supervision of the RN, thus it is not reasonable that VN education requirements mirror professional nurse education requirements; and 6) rate of student attrition usually decreases by second or third semester, thus the Board's desired ratio would be met.

The Board disagrees with these comments opposing the decrease in the faculty/student ratio due to the following reasons: 1) for more than ten years, professional nursing programs have used this ratio; 2) the decrease in the ratio was necessary due to the increasing acuity level of patients; 3) the acuity level of patients in hospitals has continued to increase over time; 4) vocational nursing students are providing care for the same patients as the professional nursing students, which indicates a need for standardization of supervision; 5) vocational nursing faculty have the same responsibility of supervising students as do the faculty in professional nursing programs; and 6) attrition rates may be offset by re-admissions. Additionally, §217.12(1)(G) describes unprofessional conduct as "[f]ailure of a clinical nursing instructor to adequately supervise or to assure adequate supervision of student experiences." This new rule supports the need for adequate faculty oversight of students. In order to give the education programs time to address any potential difficulty as stated above, this new ratio will not be implemented until the vocational schools begin the admission process for the Fall 2005 incoming class.

One comment opposed §214.4(c)(2)(A) regarding the proposed increase in the NCLEX-PN pass rate from the current 75% to the proposed 80% because of the increase in the level of difficulty of the exam beginning in Spring 2005.

The Board disagrees with this comment, because historically, increasing the level of difficulty on the licensing exam has produced minimal effects on program pass rates, and increasing the NCLEX-PN pass rate would have no effect on approximately ninety percent of programs.

Two comments were in opposition to §214.10(k)(1) allowing the use of clinical preceptors because of the lack of support by the local medical community is contrary to institutional program commitment, and since preceptors are hospital employees first, a difficulty will exist due to the lack of or varying quality of experienced preceptors from day-to-day.

The Board disagrees with this comment and supports the use of clinical preceptors because the use of clinical preceptors has proven to be successful in professional nursing programs. Also, 1) some VN programs currently utilize a successful preceptor model; 2) board guidelines have been developed to provide direction for programs, preceptors, and facilities; 3) programs are required to have contractual agreements signed by the preceptor and associated facility; 4) the use of preceptors would prevent any appreciable decrease in student enrollment; and 5) in conjunction with the decrease in the faculty/student clinical ratio, the use of preceptors will promote flexibility in student supervision and competency development.

One comment requested that the Board continue to use the current instructor qualifications for VN programs as described in §214.7(c)(1) which allows employment of LVNs as faculty in vocational nursing programs. The Board has asked that this section of the rule be reviewed by the Advisory Committee on Education (ACE) with a formal recommendation to be submitted at the April 2005 Board meeting.

The new sections are adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Katherine Thomas
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PART 12. BOARD OF VOCATIONAL NURSE EXAMINERS

CHAPTER 233. EDUCATION

SUBCHAPTER A. DEFINITIONS

22 TAC §233.1

The Board of Nurse Examiners adopts the repeal of 22 Texas Administrative Code Chapter 233, concerning Education, and specifically Subchapter A (Definitions), §233.1. The other four subchapters in this chapter are being adopted for repeal concurrently with this subchapter. The repeal is adopted without changes to the proposal as published in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10354).

Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. The repeal implements House Bill 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with the adopted repeal is the adoption of a new Chapter 214 (Vocational Nursing Education) which incorporates the education rules for Licensed Vocational Nurses into the Board of Nurse Examiners' rules. This repeal is for the purpose of preventing conflicting rules and consolidating the rules applicable to all nurses under Part 11 (Board of Nurse Examiners) of the Texas Administrative Code.

No comments were received in response to this proposal.

The repeal is adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The adoption will not affect any existing statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. OPERATION OF A VOCATIONAL NURSING PROGRAM

22 TAC §§233.11 - 233.26, 233.28 - 233.30

The Board of Nurse Examiners adopts the repeal of 22 Texas Administrative Code Chapter 233, concerning Education, and specifically Subchapter B (Operation of a Vocational Nursing Program), §§233.11 - 233.26 and §§233.28 - 233.30. The other four subchapters in this chapter are being adopted for repeal concurrently with this subchapter. The repeal is adopted without changes to the proposal as published in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10354).

Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. The repeal implements House Bill 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with the adopted repeal is the adoption of a new Chapter 214 (Vocational Nursing Education) which incorporates the education rules for Licensed Vocational Nurses into the Board of Nurse Examiners' rules. This repeal is for the purpose of preventing conflicting rules and consolidating the rules applicable to all nurses under Part 11 (Board of Nurse Examiners) of the Texas Administrative Code.

No comments were received in response to this proposal.

The repeal is adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The adoption will not affect any existing statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. APPROVAL OF PROGRAMS

22 TAC §§233.41 - 233.43

The Board of Nurse Examiners adopts the repeal of 22 Texas Administrative Code Chapter 233, concerning Education, and specifically Subchapter C (Approval of Programs), §§233.41 - 233.43. The other four subchapters in this chapter are being adopted for repeal concurrently with this subchapter. The repeal is adopted without changes to the proposal as published in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10355).

Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. The repeal implements House Bill 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with the adopted repeal is the adoption of a new Chapter 214 (Vocational Nursing Education) which incorporates the education rules for Licensed Vocational Nurses into the Board of Nurse Examiners' rules. This repeal is for the purpose of preventing conflicting rules and consolidating the rules applicable to all nurses under Part 11 (Board of Nurse Examiners) of the Texas Administrative Code.

No comments were received in response to this proposal.

The repeal is adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The adoption will not affect any existing statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. VOCATIONAL NURSING EDUCATION STANDARDS

22 TAC §§233.51 - 233.54, 233.56 - 233.58, 233.60 - 233.69, 233.71 - 233.76

The Board of Nurse Examiners adopts the repeal of 22 Texas Administrative Code Chapter 233, concerning Education, and specifically Subchapter D (Vocational Nursing Education Standards), §§233.51 - 233.54, 233.56 - 233.58, 233.60 - 233.69, and 233.71 - 233.76. The other four subchapters in this chapter are being adopted for repeal concurrently with this subchapter.

The repeal is adopted without changes to the proposal as published in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10356).

Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. The repeal implements House Bill 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with the adopted repeal is the adoption of a new Chapter 214 (Vocational Nursing Education) which incorporates the education rules for Licensed Vocational Nurses into the Board of Nurse Examiners' rules. This repeal is for the purpose of preventing conflicting rules and consolidating the rules applicable to all nurses under Part 11 (Board of Nurse Examiners) of the Texas Administrative Code.

No comments were received in response to this proposal.

The repeal is adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The adoption will not affect any existing statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. VOCATIONAL NURSE EDUCATION RECORDS

22 TAC §§233.81 - 233.85

The Board of Nurse Examiners adopts the repeal of 22 Texas Administrative Code Chapter 233, concerning Education, and specifically Subchapter E (Vocational Nurse Education Records), §§233.81 - 233.85. The other four subchapters in this chapter are being adopted for repeal concurrently with this subchapter. The repeal is adopted without changes to the proposal as published in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10357).

Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. The repeal implements House Bill 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with the adopted repeal is the adoption of a new Chapter 214 (Vocational Nursing Education) which incorporates the education rules for Licensed Vocational Nurses into the Board of Nurse Examiners' rules. This repeal is for the purpose of preventing conflicting rules and consolidating the rules applicable to all nurses under Part 11 (Board of Nurse Examiners) of the Texas Administrative Code.

No comments were received in response to this proposal.

The repeal is adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The adoption will not affect any existing statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER M. FILING REQUIREMENTS

The Commissioner of Insurance adopts new Divisions 4 - 9, §§5.9310, 5.9320, 5.9330 - 5.9332, 5.9340 - 5.9342, 5.9350 - 5.9352, and 5.9355 - 5.9357, concerning filing requirements. Sections 5.9310, 5.9320, 5.9332, 5.9342 and 5.9357 are adopted with changes to the proposed text as published in the October 29, 2004, issue of the *Texas Register* (29 TexReg 10056). Sections 5.9330, 5.9331, 5.9340, 5.9341, 5.9350 - 5.9352, 5.9355, and 5.9356 are adopted without changes.

Divisions 4 - 9, §§5.9310, 5.9320, 5.9330 - 5.9332, 5.9340 - 5.9342, 5.9350 - 5.9352, and 5.9355 - 5.9357, are necessary to implement and clarify the various filing requirements of insurers so that insurers will be able to make the necessary filings and be in compliance with the regulatory changes enacted by Senate Bill 14 (SB 14) and House Bill 1865 (HB 1865) which were enacted by the 78th Legislature, Regular Session, 2003. SB 14 amended various provisions of Chapter 5 of the Insurance Code, including Articles 5.13 and 5.13-2, as well as added Article 21.49-2U and §38.002 relating to the use of credit scoring and underwriting guidelines for personal automobile and residential property insurance, respectively. HB 1865 added Article 5.41-3 regarding commercial group property insurance. This legislation changed the form and rate filing requirements for certain insurers, and for

certain lines of insurance. Section 5.9310 (Division 4) is necessary to specify the form and content of the filing transmittal form that each insurer is required to use for property and casualty form, rate, rule, underwriting guideline, and credit scoring model filings. The information that is required in the transmittal form is necessary for the following purposes: to identify the entity making the filing, to specify the line or lines of insurance for which the filing is being made, to provide the information that is necessary for the department to track the filing in the agency, and to provide the information that is needed to properly route the filing to the divisions that will be performing the review of the filed information. Article 5.13-2 §8(a), as well as other statutes, mandates that an insurance policy form or endorsement may not be delivered or issued for delivery in Texas unless the forms have been filed with and approved by the Commissioner.

Section 5.9320 (Division 5) concerns the filing requirements for property and casualty policy form, endorsement, and manual rule filings. The information that the department specifies in this section which must be included in the filing of new and amended policy forms and endorsements is necessary for the staff reviewing the filings to ensure that the policy forms or endorsements comply with the Insurance Code, administrative rules, and Commissioner's orders and that they do not contain provisions or titles which are unjust, encourage misrepresentation, are deceptive, or violate public policy.

Sections 5.9330 - 5.9332 (Division 6) implement Insurance Code Chapter 5 filing requirements (as amended by SB 14) and also implement new Article 5.41-3 for commercial group property insurance as those provisions relate to rates and supplementary rating information. SB 14 amended or repealed various provisions of Chapter 5 of the Insurance Code, including Articles 5.13, 5.13-2, 5.101, 5.15, and 5.53. These changes essentially streamlined rate regulation from Article 5.101 benchmark and Articles 5.15 and 5.53 prior approval methods into the file and use rate regulation system of Article 5.13-2. Due to separate and distinct articles within the Insurance Code, prior to SB 14, Lloyds plans, reciprocals and interinsurance exchanges (Lloyds and reciprocals), and county mutual insurers were not subject to rate regulation for certain lines of insurance. The SB 14 amendments provided for rate regulation of residential property and automobile insurance under Article 5.13-2 for Lloyds, reciprocals, and county mutual insurance companies. Article 5.13-2 §5A provides for a limited prior approval system for certain insurers, but the overall uniform system of rate regulation effective December 1, 2004, for all insurers of property and casualty insurance in Texas is a file and use rate filing system. The department has the duty to ensure that rates used under the Insurance Code are just, fair, reasonable, adequate, not confiscatory, not excessive, and not unfairly discriminatory for the risks to which they apply. In order to accomplish this legislative mandate, insurers must file all rates, applicable rating manuals, supplementary rating information, and all other information required by the commissioner by rule. The adopted sections set forth general rate filing requirements but do not require insurers to submit a comprehensive rate filing in each instance. The department recognizes that there will be instances where lesser documentation is sufficient. In order to accommodate these different circumstances and provide insurers with some flexibility, the department has developed a list and description of seven categories of supporting information. This supporting information will generally provide the department with sufficient documentation to determine whether a rate meets the statutory requirements. The department recognizes that documentation will vary from one rate filing to another depending on the type of filing an insurer submits. For example, a rate filing containing rates for an endorsement may not require the same extent of information as a loss cost reference filing. The department may also request additional information when necessary to determine whether a rate complies with the statutory rating standards.

Sections 5.9340 - 5.9342 (Division 7) facilitate the department's management, including updates, of underwriting guidelines required to be filed with the department by insurers writing personal automobile and residential property insurance.

Sections 5.9350 - 5.9352 (Division 8) are necessary to set forth the filing requirements for credit scoring models used for certain types of personal insurance as defined in Insurance Code Article 21.49-2U.

Sections 5.9355 - 5.9357 (Division 9) set forth reduced filing requirements for certain insurers in accordance with the provisions of Articles 5.13-2, §13 and 5.13-2C.

The department has made changes to some sections in response to comments received and for clarification. None of the changes result in a substantive change to the rules. Changes were made to §5.9310(b)(7) to correctly alphabetize the list of lines of insurance and to modify a term (multi-peril) to conform to SB 14 amendments. The same modification was made in §5.9310(c)(5) and in §5.9320. A clarification was made in §5.9332(e) to properly identify location for expense information and a clarification was made in §5.9342(a)(2) to avoid confusing or redundant language. A minor change was made to §5.9357 to clarify a statutory cite.

Division 4, §5.9310, sets forth the form and content of the filing transmittal form that insurers are required to use for property and casualty form, rate, rule, underwriting guideline, and credit scoring model filings. Subsection (a) sets forth the purpose of the section. Subsection (b) defines terms and subsection (c) specifies minimum elements of required information that must be included in the transmittal form. Subsection (d) notifies insurers where they may obtain copies of the transmittal form. Subsection (e) provides that insurers may use the National Association of Insurance Commissioners transmittal form or any other transmittal form if the information included in the form contains all of the information required under subsection (c). Subsection (f) provides information to insurers on how to obtain the Filings Made Easy Guide. Subsection (g) provides information on where insurers are to submit filings within the Texas Department of Insurance.

Division 5, §5.9320, sets forth the filing requirements for property and casualty policy form, endorsement, and manual rule filings. Subsection (a) sets forth the purpose of the section. Subsection (b) defines the terms used in the section. Subsection (c)(1) contains the general filing requirements that specify that each new or amended policy form or endorsement filing that is filed for approval must contain a filing transmittal form, a copy of the proposed policy form or endorsement, and an explanatory memorandum. Subsection (c)(2)(A) contains additional filing requirements that the department may impose that are specific to new policy forms or endorsements. If the explanatory memorandum required under subsection (c)(1)(B)(iii) does not fully explain or describe the filed policy forms or endorsements, additional filing requirements may be imposed by the department. In subsection (c)(2)(B), there are additional filing requirements specific to amendments that are filed for previously approved or adopted policy forms or endorsements which include a coverage evaluation that contains a detailed explanation of the proposed changes

to the policy form or endorsement or either a side by side comparison between the proposed form or endorsement and what has been previously approved or a copy of the previously approved or adopted policy form or endorsement with clearly identified editorial notations referencing the new and replaced language. Filers are given the option of providing these additional requirements in the explanatory memorandum required under subsection (c)(1)(B)(iii) in lieu of providing them in the separate documents. Subsection (c)(3) specifies that filings shall include all provisions required by statute, administrative rule, or Commissioner's order. Subsection (d) outlines the requirements for filing manual rules with the department. Subsection (e) outlines the procedure and requirements for insurers to make reference filings for policy forms, endorsements, and manual rules. Subsection (f) provides a description of an incomplete filing, outlines the department's procedure for handling an incomplete filing, and specifies that the 60 day period for a policy form or endorsement to be deemed approved does not commence until a complete filing is received by the department.

Section 5.9330 sets forth the purpose of Division 6. Section 5.9331 defines certain terms used in the division. Section 5.9332(a) provides for maintaining current information with the department. Section 5.9332(b) - (d) sets forth specific filing requirements for rate filings made in accordance with Articles 5.13-2, 5.41-3, 5.55, and 21.50. Section 5.9332(e) requires insurers to submit sufficient supporting documentation as necessary to justify specific rates or rate changes. In accordance with Article 5.13-2 §5(a-1), subsection (e)(1) - (7) of §5.9332 sets forth categories and clear descriptions of supporting information including actuarial support, expense information, historical experience information, profit provision information, rate change information, loss cost reference information, and rate reference information. Subsection (f) of §5.9332 provides that the department may request additional information. Subsection (g) of §5.9332 describes how rate filings may be combined with form filings but may not be combined with underwriting guideline or credit scoring model filings. Subsections (h) and (i) of §5.9332 provide administrative information regarding the Filings Made Easy guide and the address to where the rate filings are to be submitted.

Section 5.9340 sets forth the purpose of Division 7. Section 5.9342 provides a means for the department to manage an increasing volume of filed underwriting guidelines and updates and to fulfill the purposes of Insurance Code §38.002. Section 5.9342(a) requires insurers to file with the department a comprehensive set of their underwriting guidelines at least once every three calendar years on or before March 1st. In addition, subsection (a) requires insurers to file underwriting guideline updates not later than 10 days after a change is made to an underwriting guideline. This establishes a reasonable timeline for insurers to file updates with the department in compliance with Insurance Code §38.002. Subsection (b) establishes that oral and electronic underwriting guidelines must be converted to written form for filing purposes. Subsection (c) provides that an insurer group or a group of affiliated insurers that files one set of underwriting guidelines or updates on behalf of individual insurers must clearly identify which underwriting guidelines apply to each insurer within the group. Subsections (d) and (e) provide that insurers must file a separate transmittal form with their underwriting guidelines and may not combine an underwriting guideline filing with a filing made in accordance with Division 5, 6 or 8 of Subchapter M.

Section 5.9350 sets forth the purpose of Division 8. Section 5.9351 references the definitions in Article 21.49-2U and defines credit scoring model or models. Section 5.9352 sets forth the filing requirements for insurers to follow when filing credit scoring models. The section also requires insurers to file all credit scoring models prior to use and requires specific information that must be filed with the department.

Section 5.9355 sets forth the purpose of Division 9. Section 5.9356 provides reference for definitions in the division. Section 5.9357(a) sets forth the informational filing requirements for an insurer of nonstandard personal automobile insurance. Section 5.9357(b) sets forth the informational filing requirements for an insurer serving the underserved market in accordance with Article 5.13-2C. Section 5.9357(c) sets forth additional provisions which apply to filings made under either subsection (a) or (b) of §5.9357.

General

Comment: A couple of commenters support the dual lists of requested information, which are a list of generally required information and an additional list of information that may be required from insurers. The commenters state that even though supporting information may not be required up front, the department may request the information as part of the rate filing. The commenters support requesting countrywide experience when necessary to determine appropriate expenses. Another commenter believes the rule goes a long way towards delivering legislative intent, providing a mainstream rating system, providing an efficient process for insurers, and protecting consumers by requiring insurers to meet statutory standards.

Agency response: The department agrees with and appreciates the comments.

Comment: A commenter states that the ultimate intent of the legislature was to create a competitive marketplace and implementation of the rule will be important. The commenter feels the marketplace should be allowed sufficient time to determine rates. The commenter does not want to create a specter of dual filing or dual regulation where certain companies are provided different rate regulatory programs which would create a non-level playing field.

Agency response: The department believes the rule effectively addresses legislative intent. Moreover, the rule does not result in unfair disadvantages or interfere with speed to market initiatives. The rules reflect the statutory differences for filing among insurers and the filing requirements apply uniformly based on these statutory differences.

§5.9310: One commenter recommends, in the interest of uniformity among the states, that the rule explicitly authorize the use of System for Electronic Rate and Form Filing (SERFF) to transmit filings.

Agency response: The department does not believe that the rule must explicitly authorize the use of SERFF since SERFF is a procedural system for submitting filings. The same filing requirements that apply to other methods of submitting filings, such as filings sent by mail, are applicable to SERFF filings.

§5.9320: One commenter states that the term "policy form" should be explicitly defined to clarify that it will not be construed to require filing of, e.g., applications, bills and diary letters.

Agency response: The department disagrees. Insurance Code Article 5.13-2 §8(a) requires insurance policies and endorsement forms for use in writing the types of insurance subject to Article 5.13-2 to be filed with and approved by the commissioner. Items not part of a policy, such as applications, bills and diary letters, do not have to be filed with or approved by the commissioner. The department believes that the rule is consistent with the statutory requirement.

§5.9332(a)(3): A commenter opposes this paragraph because the filing of information concerning fees are not required under Articles 21.35A or 21.35B. The commenter argues that none of the statutes expressly define rates to include fees. The commenter believes no valid purpose is served to require insurers to provide actuarial support for fees or subject them to the statutory rate standard.

Agency response: The department disagrees. Article 5.13-2 §5 (a-1) authorizes the commissioner to require insurers to file information concerning fees charged or collected in accordance with Articles 21.35A and 21.35B. Without information concerning fees the department cannot determine whether the resulting rates and charges satisfy the statutory requirements.

§5.9332(e): One commenter supports the language in §5.9332(e) that links a request for additional information to the statutory rate standards of excessiveness, inadequacy, or unfair discrimination. The commenter believes all references to additional information requests should be similarly linked to statutory standards, but does not cite any specific instance to which this comment pertains.

Agency response: The department appreciates the support but believes that all references to additional information requests are appropriate.

Comment: One commenter appreciates the categories of supporting information but believes that the existence of categories will force insurers to attempt to tailor their filings to this checklist of categories to avoid further requests from the department.

Agency response: The department believes that the categories and details are necessary for companies to be aware of the kind of information that may be requested from them. The list in no way compels a company to file this information unless specifically requested by the department.

§5.9332(e)(1): One commenter notes that this provision uses factor and relativity interchangeably and recommends using "factor" for clarity.

Agency response: The department disagrees and believes there is a difference in meaning between "factor" and "relativity" as factors are used as multipliers and relativities are a relationship between values and may or may not be factors.

§5.9332(e)(1)(B): A commenter states this provision requires both incurred data and paid data. According to the commenter, paid data is a subset of incurred data and thus more volatile, and requiring both will require a larger filing document. The commenter notes further that most states require only incurred data and requests the paid loss filing requirement be deleted or made optional.

Agency response: The department disagrees. Paid data may be necessary to evaluate changes in reserving patterns. Furthermore, these items are required only as necessary.

§5.9332(e)(1)(K): One commenter states this subparagraph appears to require off-balance detail on every factor change. The commenter notes that a majority of states require off-balance information on books as a whole and that this level of detail is important competitive information and provides competitors with confidential information. The commenter requests that the requirement for detail for each factor be deleted and/or modified to require only line or coverage off-balance information.

Agency response: The department disagrees. The rule does not require off-balance information on every change, rather it is required where necessary to support proposed rates. Without off-balance factors by line and/or coverage the department would not be able to determine whether the resulting rates and charges satisfy the statutory requirements.

§5.9332(e)(2): A commenter states that §5.9332(e)(2) requires three years of historical and countrywide experience. The commenter expresses that three years of state data is a commonly accepted industry standard and makes sense. Further, the commenter notes that in another place in the rule, five years of data is required. The commenter requests to submit only state data and believes the number of years for data requested should be consistent.

Agency response: The department believes the amount and type of data requested is appropriate to the category of information being requested. The department feels it is necessary to designate time periods since "standard" time periods vary from carrier to carrier and from one type of data to another type of data. The amount of data requested reflects different purposes, and different amounts of data for one purpose may not be sufficient to establish credible information for other purposes. In the case of expense information, the department believes three years of data is necessary and sufficient. Countrywide expense information is appropriate for the types of expenses typically gathered at the countrywide level especially as state data is generally not available. Countrywide data may also be necessary to support the filing. In the case of premium and loss experience, the department believes a five year time line is necessary and appropriate.

Comment: One commenter does not believe that companies should have to file indication data when increasing or decreasing surcharges or discounts.

Agency response: The department disagrees. Rates must be reasonable, adequate, and not excessive for the risks covered under the policy. Without support underlying the surcharges or discounts, the department cannot determine whether the resulting rates and charges satisfy the statutory requirements.

§5.9332(e)(2)(C): One commenter does not believe that it is appropriate to cap expenses at 110% of the industry average as it is inconsistent with the "file and use" approach of SB 14.

Agency response: The department believes that §5.9332(e)(2)(C) reflects legislative intent regarding capping expenses at 110% of the industry median. To the extent that the rates being filed are not subject to a statutory cap, the department believes that this rule does not impose a cap but rather calls for the evidence necessary to show that the computation of the rate does not include disallowed expenses when it is a "necessary adjustment."

§5.9332(f): A commenter believes the legislature did not intend for "file and use" to amount to a free reign for the insurance industry. The commenter notes that SB 14 gives the department the tools necessary to play an active and vigilant role in overseeing the industry on behalf of policyholders. According to the

commenter, the department should have full information to identify problems early and act quickly and, by not requiring insurers to provide all supporting information up front, the department will be left to play catch up with insurers as it tries to ascertain the rates. Further, the commenter states that the lag time involved in requesting additional information and reviewing for sufficiency may place the public at risk.

Agency response: The department believes that the intent of SB 14 is to encourage competition in the marketplace without undue or burdensome filing requirements. Flexible filing requirements are designed to promote legislative intent. The rule allows the department to require additional information which will enable the department to gauge the reasonableness of the rates.

§5.9342: A commenter welcomes the idea of a periodic regular review of underwriting guidelines but questions why it is based on a three year period. Carriers should file their underwriting guideline requirements annually, unless they make changes during the year, thus necessitating another filing. Another commenter recommends that §5.9342 be deleted because it imposes unnecessary filing and tracking burdens, exceeds the statutory mandate, and does not provide any regulatory benefit. The commenter states that while the relevant statute only requires that personal auto and residential property underwriting guidelines be filed with the department (without indicating how often this must be done) and updated when changed, the proposed rule would require that the guidelines be filed at least once every third year.

Agency response: The department disagrees. Insurance Code §38.002 became effective June 11, 2003. Under §38.002(b), each insurer is required to file with the department a copy of its underwriting guidelines for all personal automobile and residential property policies delivered, issued for delivery, or renewed on of after June 11, 2003. In addition, §38.002 requires each insurer to update its filing each time the underwriting guidelines are changed, not annually. The department believes requiring a complete set of underwriting guidelines every three years is necessary to avoid the possibility of the insurers' underwriting guidelines becoming incomprehensible as a result of infinite piecemeal filings. The department further believes that it is reasonable, necessary and within its statutory authority to require each insurer to file a complete and comprehensive set of its underwriting guidelines at least once every three years. This requirement will promote efficiency of department review, decrease the number of department inquiries to insurer, and minimize cost to insurers.

§5.9342(e): A commenter stated that §5.9342(e) may not be statutorily required but the rule requires companies to file underwriting guidelines separately. To the extent possible, the commenter would like to submit documentation or a letter specifying guidelines sent in a previous filing, rather than submit a separate filing.

Agency response: The rule is intended to assist the department in maintaining distinct statutory public disclosure requirements. For example, under Article 5.13-2 §6, each form, rate and rule filing and any supporting information is open to public inspection as of the date of filing. Under Article 21.49-2U §10, credit scoring model filings are public information not subject to any exceptions and cannot be withheld from disclosure. However, under §38.002(f), underwriting guidelines are subject to Chapter 552, Government Code, and may be considered information excepted from public disclosure. The department believes that these separate and distinct filing requirements enable the department to expeditiously identify and distinguish between filings subject to immediate public disclosure and filings that may be excepted from public disclosure. The separate filing provisions of this rule are not intended to restrict companies from submitting items that may have otherwise been considered underwriting guidelines in a rate or form filing. Rather the department believes this requirement will promote efficiency of department review, decrease the number of department inquiries to insurers, and provide the appropriate level of protection afforded by statute.

§5.9352: A commenter believes that the provision in §5.9352 requiring filing prior to use should be deleted because it is burdensome, exceeds the statutory mandate and does not provide any regulatory benefit.

Agency response: The department disagrees. The transition section of Article 21.49-2U in SB 14 specifies that models must be filed "before using." The department believes that the provision in §5.9352 is appropriate.

For: Office of Public Interest Counsel.

For with changes: Progressive Insurance; Texas Watch.

Against: American Insurance Association.

Neither For or Against: Texas Coalition for Affordable Insurance Solutions.

DIVISION 4. FILINGS MADE EASY--FILING TRANSMITTAL FORM AND REQUIREMENTS FOR PROPERTY AND CASUALTY FORM, RATE, RULE, UNDERWRITING GUIDELINE, AND CREDIT SCORING MODEL FILINGS

28 TAC §5.9310

The new section is adopted under Insurance Code Articles 5.06, 5.13, 5.13-2, 5.13-2C, 5.35, 5.41-3, 5.55, 5.57, 5.145, 21.49-2U, 21.50 and §36.001 and §38.002. SB 14, as enacted by the 78th Legislature, Regular Session 2003, amended various provisions of Chapter 5 of the Insurance Code, added Chapter 21.49-2U relating to the use of credit scoring, and added §38.002 relating to underwriting guidelines for personal automobile and residential property insurance. Article 5.13(e) provides that the regulatory power conferred in this article is vested in the commissioner. Article 5.13-2 gives the commissioner authority to regulate policy forms, endorsements, and rates for the writing of insurance subject to this article. Article 5.13-2, §5(a) and (a-1) provide that insurers shall file with the commissioner all rates, applicable rating manuals, supplementary rating information, and additional information as required by the commissioner for risks written in this state and that the commissioner by rule shall determine the information required to be provided in the filing. Article 5.13-2, §13(f) provides that county mutual insurance companies that have a group market share of less than 3.5 percent and that issue personal auto policies only at nonstandard rates are subject to rate filing requirements as determined by the commissioner by rule. Article 5.13-2C provides that a residential property insurer that meets certain criteria related to writing more than fifty percent of its policies in underserved areas and servicing low value homes are exempt from the rate filing and approval requirements of Articles 5.142 and 5.13-2. Article 5.41-3, which concerns the writing of commercial group property insurance, provides the requirements for forming a group or association that would be eligible to be written on a commercial group property policy, the form filing and rate filing requirements for such group policies, and

that an insurer shall file related information that clearly identifies the group of businesses or the association to be insured. Article 5.55 provides rate standards and rate filing requirements for workers' compensation insurance. Article 5.57 requires the commissioner to prescribe a uniform policy form for workers' compensation insurance, and provides that an insurance company may not use a form other than one prescribed unless the form is an endorsement appropriate to the company's plan of operation and submitted to and approved by the department. Article 5.145, §2 provides that notwithstanding any other provision of the Insurance Code and except as provided in this section, an insurer is governed by the provisions of §8 of Article 5.13-2 relating to policy forms and endorsements for personal automobile and residential property insurance, but that an insurer may continue to use the policy forms and endorsements promulgated, approved, or adopted under Articles 5.06 and 5.35 upon notification to the commissioner in writing. Articles 5.06 and 5.35 set forth filing and approval procedures for motor vehicle insurance and residential property insurance previously not subject to Article 5.13-2. Article 5.145 provides that the commissioner may adopt reasonable and necessary rules to implement this article relating to policy forms for personal and residential property insurance. Article 21.49-2U, relating to the use of credit scoring, provides that the commissioner may adopt rules as necessary to implement this article. Article 21.50 provides the form and rate regulation provisions for mortgage guaranty insurance. Section 38.002 provides that each insurer, as defined, engaged in the business of personal automobile or residential property insurance in this state shall file with the department a copy of the insurer's underwriting guidelines. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.9310. Property and Casualty Filing Transmittal Form.

(a) Purpose. The purpose of this division is to specify the form and content of the filing transmittal form that is to be used for property and casualty form, rate, rule, underwriting guideline, and credit scoring model filings and provide information on obtaining such form.

(b) Definitions. Words and terms not defined in this division may be defined in the Insurance Code Article 5.13-2 and Subchapter D of Chapter 5 and shall have the same meaning when used in this division. The following words and terms when used in this division shall have the following meanings unless the context indicates otherwise:

(1) Department--Texas Department of Insurance (TDI).

(2) TDI file number--The number assigned by the department to a filing submitted by an individual company.

(3) TDI link number--The number assigned by the department to link individual TDI file numbers to a filing which is submitted for more than one company within a group.

(4) Interline filing--A filing submitted for an endorsement that may be used with more than one line of insurance provided the endorsement does not have an impact on rates or a rate filing that may be used with more than one line of insurance that contains only information concerning policy fees, service fees, and other fees that are charged or collected by the insurer under Insurance Code Article 21.35A or 21.35B.

(5) Reference filing--A filing that references the use of adopted or approved policy form(s), endorsement(s), manual rule(s), rate(s), or other acceptable policy form(s), or endorsement(s), manual rule(s), or rate(s), to which the department has assigned a TDI file number.

(6) Dual filing--A monoline filing submitted for a specific line of insurance that may also be written as part of a multi-peril policy.

(7) Line of insurance--For purposes of this section, each of the following is a line of insurance:

(A) automobile-commercial;

(B) automobile-personal;

(C) boiler and machinery;

(D) casualty (personal and commercial);

(E) credit;

(F) credit-involuntary unemployment;

(G) crime;

(H) crop hail;

(I) excess liability;

(J) excess umbrella;

(K) farm and ranch;

(L) farm liability;

(M) farm and ranch owners;

(N) fidelity bonds;

(O) financial guaranty bonds or insurance;

(P) guaranteed auto protection (GAP) (commercial);

(Q) guaranteed auto protection (GAP) (personal);

(R) general liability;

(S) glass;

(T) inland marine (commercial);

(U) inland marine (personal);

(V) involuntary unemployment;

(W) miscellaneous casualty;

(X) miscellaneous liability;

(Y) mortgage guaranty;

(Z) multi-peril;

(AA) personal liability;

(BB) professional liability;

(CC) property-commercial;

(DD) property-residential (dwelling);

(EE) property-residential (homeowners);

(FF) rain;

(GG) surety bonds (other than criminal court appearance bonds);

(HH) umbrella-commercial;

(II) umbrella-personal; and

(JJ) workers' compensation.

(c) Form and content of transmittal form. The filing transmittal form must be typed and contain, at a minimum, the following information:

(1) company name;

(2) NAIC number of the company;

(3) company group name and group NAIC number;

(4) type of filing:

(A) new filing; or

(B) revision or replacement of an existing filing. If revising or replacing an existing filing, the TDI file number or link number of the filing that is being revised or replaced must be provided.

(5) line of insurance:

(A) all filings must specify the line of insurance for which the filing is being made;

(B) interline filings must indicate all lines of insurance to which the filing is applicable;

(C) dual filings must indicate multi-peril insurance and a specific line of insurance to which the filing is applicable;

(6) basic description of the filing:

(A) rate filing, rating manual filing, and rating rule filing;

(B) policy form;

(C) endorsement;

(D) manual rules, other than rating manual rules;

(E) reference filing--must list the TDI file number or TDI link number of the filing being referenced;

(F) credit scoring model; or

(G) underwriting guidelines;

(7) proposed effective date; and

(8) contact person, including name, telephone number, mailing address, fax number, and e-mail address (if available).

(d) Availability of transmittal form. The Filing Transmittal Form (FTF) is a form that is provided by the department for insurers who are making the filings specified in subsection (c)(6) of this section. This form may be obtained from the TDI website at www.tdi.state.tx.us.

(e) Alternative transmittal forms. An insurer may use, as an alternative, a transmittal form published by the National Association of Insurance Commissioners (NAIC) or any other transmittal form if the information included in the transmittal form, or in an addendum to the transmittal form, contains all the information required under subsection (c) of this section.

(f) The department maintains the Filings Made Easy guide to assist insurers in submitting filings and complying with statutory requirements. This guide may be obtained from the TDI website at www.tdi.state.tx.us.

(g) Filings under Divisions 4, 5, 6, 7, 8, and 9 of this subchapter must be submitted to the Texas Department of Insurance, Property & Casualty Intake Unit, 333 Guadalupe, Austin, Texas 78701 or to the Texas Department of Insurance, Property & Casualty Intake Unit, Mail Code 104-3B, P.O. Box 149104, Austin, Texas 78714-9104.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2005.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: February 10, 2005
Proposal publication date: October 29, 2004
For further information, please call: (512) 463-6327

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DIVISION 5. FILINGS MADE EASY--REQUIREMENTS FOR PROPERTY AND CASUALTY POLICY FORM, ENDORSEMENT, AND MANUAL RULE FILINGS

28 TAC §5.9320

The new section is adopted under Insurance Code Articles 5.06, 5.13, 5.13-2, 5.13-2C, 5.35, 5.41-3, 5.55, 5.57, 5.145, 21.49-2U, 21.50 and §36.001 and §38.002. SB 14, as enacted by the 78th Legislature, Regular Session 2003, amended various provisions of Chapter 5 of the Insurance Code, added Chapter 21.49-2U relating to the use of credit scoring, and added §38.002 relating to underwriting guidelines for personal automobile and residential property insurance. Article 5.13(e) provides that the regulatory power conferred in this article is vested in the commissioner. Article 5.13-2 gives the commissioner authority to regulate policy forms, endorsements, and rates for the writing of insurance subject to this article. Article 5.13-2, §5(a) and (a-1) provide that insurers shall file with the commissioner all rates, applicable rating manuals, supplementary rating information, and additional information as required by the commissioner for risks written in this state and that the commissioner by rule shall determine the information required to be provided in the filing. Article 5.13-2, §13(f) provides that county mutual insurance companies that have a group market share of less than 3.5 percent and that issue personal auto policies only at nonstandard rates are subject to rate filing requirements as determined by the commissioner by rule. Article 5.13-2C provides that a residential property insurer that meets certain criteria related to writing more than fifty percent of its policies in underserved areas and servicing low value homes are exempt from the rate filing and approval requirements of Articles 5.142 and 5.13-2. Article 5.41-3, which concerns the writing of commercial group property insurance, provides the requirements for forming a group or association that would be eligible to be written on a commercial group property policy, the form filing and rate filing requirements for such group policies, and that an insurer shall file related information that clearly identifies the group of businesses or the association to be insured. Article 5.55 provides rate standards and rate filing requirements for workers' compensation insurance. Article 5.57 requires the commissioner to prescribe a uniform policy form for workers' compensation insurance, and provides that an insurance company may not use a form other than one prescribed unless the form is an endorsement appropriate to the company's plan of operation and submitted to and approved by the department. Article 5.145, §2 provides that notwithstanding any other provision of

the Insurance Code and except as provided in this section, an insurer is governed by the provisions of §8 of Article 5.13-2 relating to policy forms and endorsements for personal automobile and residential property insurance, but that an insurer may continue to use the policy forms and endorsements promulgated, approved, or adopted under Articles 5.06 and 5.35 upon notification to the commissioner in writing. Articles 5.06 and 5.35 set forth filing and approval procedures for motor vehicle insurance and residential property insurance previously not subject to Article 5.13-2. Article 5.145 provides that the commissioner may adopt reasonable and necessary rules to implement this article relating to policy forms for personal and residential property insurance. Article 21.49-2U, relating to the use of credit scoring, provides that the commissioner may adopt rules as necessary to implement this article. Article 21.50 provides the form and rate regulation provisions for mortgage guaranty insurance. Section 38.002 provides that each insurer, as defined, engaged in the business of personal automobile or residential property insurance in this state shall file with the department a copy of the insurer's underwriting guidelines. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.9320. Required Information for the Preparation and Submission of Policy Form, Endorsement, or Manual Rule (other than rating manual) Filings.

(a) Purpose. The purpose of this section is to specify the filing requirements for property and casualty policy form, endorsement, and manual rule filings that are submitted pursuant to Chapter 5 or Article 21.50 of the Texas Insurance Code.

(b) Definitions. The definitions set forth in §5.9310 of this title (relating to Property and Casualty Filing Transmittal Form) apply to this division.

(c) Policy forms and endorsements. All insurer and advisory organization policy form and endorsement filings submitted pursuant to Chapter 5 or Article 21.50 of the Texas Insurance Code, shall comply with the general filing requirements, other applicable requirements set forth in paragraphs (1) - (3) of this subsection, and any other applicable rules adopted by the commissioner.

(1) General filing requirements.

(A) All filings for new and amended policy forms or endorsements shall relate to only one line of insurance except for multi-peril, dual and interline filings.

(B) All filings for new and amended policy forms or endorsements shall contain the following:

(i) a filing transmittal form as required in Division 4 of this subchapter (relating to Filings Made Easy--Filing Transmittal Form and Requirements for Property and Casualty Form, Rate, Rule, Underwriting Guideline, and Credit Scoring Model Filings).

(ii) a copy of the proposed policy form(s) and/or endorsement(s); and

(iii) an explanatory memorandum that contains a detailed explanation of the reason(s) for filing the new or revised policy form(s) and/or endorsement(s) or manual rule(s), a description of the policy form(s) or endorsement(s), and the application (e.g., the type of risk or risks the form(s) or endorsement(s) will be used with).

(2) Additional filing requirements.

(A) Additional filing requirements specific to new policy forms or endorsements for use with new products. If the explanatory memorandum required under paragraph (1)(B)(iii) of this subsection does not fully explain or describe the filed policy form(s) or endorsement(s), the department may request either:

(i) a summary of all policy provisions that includes a detailed description and explanation of the coverages, limitations, exclusions and conditions; or

(ii) a coverage comparison to a similar policy form or endorsement that has been previously approved or adopted by the commissioner containing a detailed explanation of all the differences including any restrictions in coverage, enhancements in coverage, or clarifications to the previously approved policy form(s) or endorsement(s).

(B) Additional filing requirements specific to amending previously approved or adopted policy forms or endorsements. In addition to the general requirements outlined in paragraph (1) of this subsection, the filing shall include a coverage evaluation that contains a detailed explanation of the proposed changes including any restrictions in coverage, enhancements in coverage, or clarifications to the previously approved or adopted policy form(s) or endorsement(s). The additional requirements under this subsection may be provided in the explanatory memorandum required under paragraph (1)(B)(iii) of this subsection or by providing:

(i) a side-by-side comparison showing any differences between the previously approved or adopted policy form(s) or endorsement(s) and the proposed policy form(s) or endorsement(s); or

(ii) a copy of the previously approved or adopted policy form(s) or endorsement(s) indicating the differences between the approved or adopted policy form(s) or endorsement(s) and the filed policy form(s) or endorsement(s) with the new language underlined and the deleted language in brackets with a strikethrough, or other clearly identified or highlighted editorial notations referencing the new and replaced language.

(3) Statutory and regulatory filing requirements.

(A) Filings for new and amended policy form(s) and/or endorsement(s) shall include all provisions required by statute, administrative rule, or commissioner's order for a specific line of insurance. The required statutory or administrative rule provisions may be added to a policy form by a Texas amendatory endorsement. The amendatory endorsement shall be included in the filing or a filing may reference an approved amendatory endorsement that is applicable to the policy form(s) contained in the filing.

(B) All policy forms and endorsements contained in personal automobile and residential property insurance filings shall meet the statutory requirements for plain language in policies as set forth by the Commissioner of Insurance by order.

(d) Filing requirements for manual rules. Manual rules are rules other than rating rules that may be filed with policy form(s) or endorsement(s) or may be submitted separately. When submitted separately, in addition to the transmittal form, the manual rule filing shall relate to only one line of insurance except for multi-peril, dual and interline filings, and include an explanatory memorandum as described in subsection (c)(1)(B)(iii) of this section.

(e) Filing requirements for reference filings. A filing may be made referencing approved or accepted policy form(s), endorsement(s), or manual rule(s) without including a copy of the referenced policy form(s), endorsement(s) or manual rule(s). All reference filings shall relate to only one line of insurance except for dual filings,

interline filings, and multi-peril filings. In addition to the transmittal form, a reference filing must include the following information for policy form(s), endorsement(s), or manual rule(s):

(1) name of insurance company or advisory organization whose filing is being referenced; and

(2) TDI file number, link number, or reference number of the filing being referenced.

(f) Incomplete filing.

(1) a filing will be considered incomplete if the filing does not comply with the filing requirements contained in subsections (c), (d) and (e) of this section;

(2) a filing that is determined to be incomplete by the department will be returned to the filer with a letter or electronic notification, indicating the reason(s) for the filing being returned; and

(3) the deemer period does not commence until a complete filing is received by the department.

(g) Combining filings. Filings under this division may be combined with filings made in accordance with Division 6 or 9 of this subchapter (relating to Filings Made Easy--Rate and Rate Manual Filing Requirements and Reduced Filing Requirements for Certain Insurers). These combined filings may utilize a single transmittal form. Filings under this division may not be combined with filings made in accordance with Division 7 or 8 of this subchapter (relating to Filings Made Easy--Underwriting Guideline Filing Requirements for Personal Automobile and Residential Property Insurance and Filings Made Easy--Credit Scoring Models Filing Requirements for Personal Insurance) due to distinct and separate statutes governing underwriting guidelines and credit scoring models.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2005.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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DIVISION 6. FILINGS MADE EASY--RATE AND RATE MANUAL FILING REQUIREMENTS

28 TAC §§5.9330 - 5.9332

The new sections are adopted under Insurance Code Articles 5.06, 5.13, 5.13-2, 5.13-2C, 5.35, 5.41-3, 5.55, 5.57, 5.145, 21.49-2U, 21.50 and §36.001 and §38.002. SB 14, as enacted by the 78th Legislature, Regular Session 2003, amended various provisions of Chapter 5 of the Insurance Code, added Chapter 21.49-2U relating to the use of credit scoring, and added §38.002 relating to underwriting guidelines for personal automobile and residential property insurance. Article 5.13(e) provides that the regulatory power conferred in this article is vested in the commissioner. Article 5.13-2 gives the commissioner authority to regulate policy forms, endorsements, and rates for the writing of insurance subject to this article. Article 5.13-2, §5(a) and (a-1) provide that insurers shall file with the commissioner all rates, applicable rating manuals, supplementary rating information, and additional information as required by the commissioner for risks written in this state and that the commissioner by rule shall determine the information required to be provided in the filing. Article 5.13-2, §13(f) provides that county mutual insurance companies that have a group market share of less than 3.5 percent and that issue personal auto policies only at nonstandard rates are subject to rate filing requirements as determined by the commissioner by rule. Article 5.13-2C provides that a residential property insurer that meets certain criteria related to writing more than fifty percent of its policies in underserved areas and servicing low value homes are exempt from the rate filing and approval requirements of Articles 5.142 and 5.13-2. Article 5.41-3, which concerns the writing of commercial group property insurance, provides the requirements for forming a group or association that would be eligible to be written on a commercial group property policy, the form filing and rate filing requirements for such group policies, and that an insurer shall file related information that clearly identifies the group of businesses or the association to be insured. Article 5.55 provides rate standards and rate filing requirements for workers' compensation insurance. Article 5.57 requires the commissioner to prescribe a uniform policy form for workers' compensation insurance, and provides that an insurance company may not use a form other than one prescribed unless the form is an endorsement appropriate to the company's plan of operation and submitted to and approved by the department. Article 5.145, §2 provides that notwithstanding any other provision of the Insurance Code and except as provided in this section, an insurer is governed by the provisions of §8 of Article 5.13-2 relating to policy forms and endorsements for personal automobile and residential property insurance, but that an insurer may continue to use the policy forms and endorsements promulgated, approved, or adopted under Articles 5.06 and 5.35 upon notification to the commissioner in writing. Articles 5.06 and 5.35 set forth filing and approval procedures for motor vehicle insurance and residential property insurance previously not subject to Article 5.13-2. Article 5.145 provides that the commissioner may adopt reasonable and necessary rules to implement this article relating to policy forms for personal and residential property insurance. Article 21.49-2U, relating to the use of credit scoring, provides that the commissioner may adopt rules as necessary to implement this article. Article 21.50 provides the form and rate regulation provisions for mortgage guaranty insurance. Section 38.002 provides that each insurer, as defined, engaged in the business of personal automobile or residential property insurance in this state shall file with the department a copy of the insurer's underwriting guidelines. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.9332. Filing Requirements.

(a) An insurer shall keep the following information current with the department and is not required to re-file unless affected by the proposed filing or requested by the department or commissioner:

(1) All prospective loss cost multipliers, rates, and rating manuals as required by Insurance Code Articles 5.13-2, 5.41-3, 5.55, 5.171, 21.49-2U, 21.50 or other articles that impose specific filing requirements for any line of insurance;

(2) Supplementary rating information; and

(3) Information concerning all policy fees, service fees, and other fees that are charged or collected by an insurer under Insurance Code Article 21.35A or 21.35B.

(b) For rates filed pursuant to Insurance Code Article 5.13-2 or 5.41-3, a filing containing rate information must contain the information described in paragraphs (1) - (3) of this subsection:

(1) A filing transmittal form as required in Division 4 of this subchapter (relating to Filings Made Easy--Filing Transmittal Form and Requirements for Property and Casualty Form, Rate, Rule, Underwriting Guideline, and Credit Scoring Model Filings).

(2) The filing memorandum briefly explaining the purpose of the filing, and all material background details relating to the filing including a statement on the overall impact of the filing. For example, a filing memorandum may include one or more of the following, as applicable:

(A) reasons for entry into a new market;

(B) reasons for offering additional coverages;

(C) reasons for offering new discounts or applying new surcharges;

(D) reasons for changing rates;

(E) changes in the insurer's goals and objectives; or

(F) an explanation of changes in insurer or insurer group operations.

(3) Rating information can be any rate pages detailing information described in subsection (a) of this section or any supporting information required by §5.9941 or §5.9960 of this title (relating to Differences in Rates Charged Due Solely to Difference in Credit Scores and Exception to Territory Rating Requirements under Insurance Code Article 5.171) or any other applicable statute or rule.

(4) In accordance with Article 5.41-3, insurers filing commercial group property rates shall clearly identify the group of businesses or the association to be insured.

(c) For rates filed pursuant to Insurance Code Article 5.55, a filing containing rating information must contain the information described in paragraphs (1) - (3) of subsection (b) of this section. An insurer may not make such filing more frequently than every six months in accordance with Insurance Code Article 5.55, §3(a).

(d) For rates filed pursuant to Insurance Code Article 21.50, a filing containing rating information must contain the information described in paragraphs (1) - (3) of subsection (b) of this section. In accordance with Article 21.50 rates must be filed at least 15 days before they are to become effective and must include a certification as described in Article 21.50, §1A(g)(4).

(e) Except as provided in Division 9 of this subchapter (relating to Filings Made Easy--Reduced Filing Requirements for Certain Insurers), insurers must provide supporting information as necessary for the department to establish that a filing produces rates which are adequate, not excessive or unfairly discriminatory for the risks to which they apply. Categories of supporting information are listed in paragraphs (1) - (7) of this subsection, but are not necessarily required for every rate filing. Insurers must only provide sufficient materials to justify specific rates or changes being proposed. To the extent the information originally submitted in a rate filing is insufficient, the department may request additional information as deemed necessary by the department or commissioner.

(1) Actuarial support. Actuarial support generally includes rate indications and support, including the data and methodologies utilized by the insurer to derive such indications. Supporting information that is submitted with a filing should include each of the following to the extent applicable:

(A) premiums at current rate level and applicable on-level factors;

(B) incurred and paid losses;

(C) loss and claim development factors;

(D) premium and loss trend factors;

(E) rate relativities (e.g., classification, territory, amount of insurance);

(F) increased limits factors;

(G) hurricane and non-hurricane catastrophe factors or loss provisions;

(H) definition of a catastrophe and how it has changed over the experience period used to calculate the provisions;

(I) deductible credits and debits;

(J) description and support for discounts and surcharges;

(K) off-balance factors if there have been changes in relativities (e.g., discounts, surcharges, territorial definitions);

(L) credibility;

(M) expense and profit provisions; and

(N) contingency provisions.

(2) Projected and historical expense information. As applicable to the insurer's filing, the information set out in subparagraphs (A) - (C) of this paragraph should be filed. For Texas, and if applicable, country-wide experience, the insurer should provide projected and historical expense information. The loss adjustment expenses would be shown as a dollar amount as well as a ratio to incurred losses. All other expenses should be shown as a dollar amount as well as a ratio to direct written premium. All expense items should be on a direct basis.

(A) Three years of historical Texas experience for commission and brokerage expenses incurred; taxes, licenses, and fees incurred; losses incurred; and, defense and cost containment expenses incurred. These shall be the amounts, or a subset of the amounts, reported on the Exhibit of Premiums and Losses (Statutory Page 14 Data) in the insurer's Annual Statement.

(B) Three years of historical countrywide experience for commission and brokerage expenses incurred, other acquisition expenses incurred, general expenses incurred, losses incurred, defense and cost containment expenses incurred and adjusting and other loss adjustment expenses incurred. These shall be the amounts reported in the insurer's Insurance Expense Exhibit, Part III (IEE) in the insurer's Annual Statement.

(C) Three years of historical countrywide experience for each category of disallowed expenses shall be the amounts reported in the insurers' response to the annual Texas Department of Insurance Call for Disallowed Expense Data. Total other acquisition expenses and general expenses each adjusted for disallowed expenses should be listed. The total adjusted general expense percentage should reflect any necessary adjustment due to the capping of general expenses at 110% of the industry median for the line of insurance.

(D) To the extent the expense provisions that underlie the rates differ from the historical expenses, support should be provided. For filings submitted under Insurance Code Article 5.13-2, the expense provisions should be net of the disallowed expenses as defined in §5.9331 of this division (relating to Definitions). Provisions for commissions and brokerage expenses; other acquisition expenses; general expenses; taxes, licenses and fees; and profit and contingencies, should be displayed and a sum computed. In addition, a permissible loss and loss adjustment expense ratio shall be computed as unity less the sum of these expense provisions.

(3) Historical experience information. This displays an insurer's most recent five year historical experience for Texas which are the amounts, or a subset of the amounts pertinent to the subline, reported on the Exhibit of Premiums and Losses (Statutory Page 14 Data) in the insurer's Annual Statement. It also includes the most recent five year countrywide experience which are the amounts, or a subset of the amounts pertinent to the subline, reported on the insurer's IEE, part III. Direct premiums written, direct premiums earned, direct losses and defense and cost containment expenses paid, and direct losses and defense and cost containment expenses incurred are shown as well as the ratio of the incurred loss and defense and cost containment expenses incurred to direct earned premiums, for both Texas and countrywide experience.

(4) Profit provision information. A brief description of the methodology and assumptions used to arrive at the profit provisions underlying the proposed rates.

(5) Rate change information. This generally includes a rate change history, the statewide average proposed rate change for each applicable coverage, form, or classification and the total average rate change for all coverages, forms, and classifications combined, even if only the rates for some of the coverages or forms are being changed. For loss cost reference filings, rate change information would include the proposed percentage change in the underlying loss costs, the change in the insurer's loss cost multiplier, and the rate level change (i.e., the product of the change in the loss costs and the loss cost multipliers, expressed as a factor). For workers' compensation filings, change information would include the impact of the change in relativities if the filing includes adopting a new set of relativities using either the insurer's own class distribution or the industry wide distribution, the change in the insurer's deviation, and the rate level change (i.e., the product of the change in the relativities and the deviation, expressed as a factor).

(6) Loss cost reference information. This includes the following:

(A) The TDI file number, link number, or reference number of the loss costs being referenced;

(B) The derivation of the loss cost multiplier proposed including any loss cost modification factor and the following expense and profit provisions:

(i) commission and brokerage expenses;

(ii) other acquisition expenses;

(iii) general expenses;

(iv) taxes, licenses and fees; and

(v) underwriting profit and contingencies;

(C) The loss cost multiplier to be used as of the effective date of the filing; and

(D) For rate change filings, the loss cost multiplier used immediately prior to the effective date of the filing, and the effective rate level change due to any change in loss cost multiplier.

(7) Rate reference information. Rate reference information includes:

(A) A description of the rates being referenced including the line of business and TDI file number or link number;

(B) If an insurer is developing package modification factors, proposed modification factors and supporting data; and

(C) If an insurer is referencing package modification factors, a description of the package modification factor including a TDI file number or link number.

(f) Any filings that do not fully comply with all of the filing requirements described in this division may be considered incomplete and may be returned to the filer for completion with a notice stating that the filing is not complete and shall identify the additional information that is required for completion of the filing.

(g) The department may request additional information as necessary related to a rate filing, including actuarial or other reasonable support of rates as deemed necessary by the department or commissioner.

(h) Filings under this division may be combined with filings made in accordance with Division 5 of this subchapter (relating to Filings Made Easy--Requirements for Property and Casualty Policy Form, Endorsement, and Manual Rule Filings). These combined filings may utilize a single transmittal form. Filings under this division may not be combined with filings made in accordance with Division 7 or 8 of this subchapter (relating to Filings Made Easy--Underwriting Guideline Filing Requirements for Personal Automobile and Residential Property Insurance and Filings Made Easy--Credit Scoring Models Filing Requirements for Personal Insurance) due to distinct and separate statutes governing underwriting guidelines and credit scoring models.

(i) The department maintains the Filings Made Easy guide to assist insurers with compliance of statutory requirements. Insurers may refer to the Filings Made Easy guide for rate filing forms that insurers may use to display necessary supporting information described in subsection (e) of this section. This guide may be obtained from the TDI website at www.tdi.state.tx.us.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 7. FILINGS MADE EASY--UNDERWRITING GUIDELINE FILING REQUIREMENTS FOR PERSONAL AUTOMOBILE AND RESIDENTIAL PROPERTY INSURANCE

28 TAC §§5.9340 - 5.9342

The new sections are adopted under Insurance Code Articles 5.06, 5.13, 5.13-2, 5.13-2C, 5.35, 5.41-3, 5.55, 5.57, 5.145, 21.49-2U, 21.50 and §36.001 and §38.002. SB 14, as enacted by the 78th Legislature, Regular Session 2003, amended various provisions of Chapter 5 of the Insurance Code, added Chapter 21.49-2U relating to the use of credit scoring, and added §38.002 relating to underwriting guidelines for personal automobile and residential property insurance. Article 5.13(e) provides that the regulatory power conferred in this article is vested in the commissioner. Article 5.13-2 gives the commissioner authority to regulate policy forms, endorsements, and rates for the writing of insurance subject to this article. Article 5.13-2, §5(a) and (a-1) provide that insurers shall file with the commissioner all rates, applicable rating manuals, supplementary rating information, and additional information as required by the commissioner for risks written in this state and that the commissioner by rule shall determine the information required to be provided in the filing. Article 5.13-2, §13(f) provides that county mutual insurance companies that have a group market share of less than 3.5 percent and that issue personal auto policies only at nonstandard rates are subject to rate filing requirements as determined by the commissioner by rule. Article 5.13-2C provides that a residential property insurer that meets certain criteria related to writing more than fifty percent of its policies in underserved areas and servicing low value homes are exempt from the rate filing and approval requirements of Articles 5.142 and 5.13-2. Article 5.41-3, which concerns the writing of commercial group property insurance, provides the requirements for forming a group or association that would be eligible to be written on a commercial group property policy, the form filing and rate filing requirements for such group policies, and that an insurer shall file related information that clearly identifies the group of businesses or the association to be insured. Article 5.55 provides rate standards and rate filing requirements for workers' compensation insurance. Article 5.57 requires the commissioner to prescribe a uniform policy form for workers' compensation insurance, and provides that an insurance company may not use a form other than one prescribed unless the form is an endorsement appropriate to the company's plan of operation and submitted to and approved by the department. Article 5.145, §2 provides that notwithstanding any other provision of the Insurance Code and except as provided in this section, an insurer is governed by the provisions of §8 of Article 5.13-2 relating to policy forms and endorsements for personal automobile and residential property insurance, but that an insurer may continue to use the policy forms and endorsements promulgated, approved, or adopted under Articles 5.06 and 5.35 upon notification to the commissioner in writing. Articles 5.06 and 5.35 set forth filing and approval procedures for motor vehicle insurance and residential property insurance previously not subject to Article 5.13-2. Article 5.145 provides that the commissioner may adopt reasonable and necessary rules to implement this article relating to policy forms for personal and residential property insurance. Article 21.49-2U, relating to the use of credit scoring, provides that the commissioner may adopt rules as necessary to implement this article. Article 21.50 provides the form and rate regulation provisions for mortgage guaranty insurance. Section 38.002 provides that each insurer, as defined, engaged in the business of personal automobile or residential property insurance in this state shall file with the department a copy of the insurer's underwriting guidelines. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.9342. Filing Requirements.

(a) An insurer must file with the department:

(1) at least once every three calendar years on or before March 1, beginning March 1, 2004, a written, comprehensive set of each underwriting guideline used by the insurer or the insurer's agent; and

(2) not later than the 10th day after the underwriting guideline has changed, a written update to the underwriting guideline clearly identifying each section of the previously filed underwriting guideline that has changed.

(b) For purposes of compliance with this section, an oral or electronic underwriting guideline must be converted to written form.

(c) An insurer group or group of affiliated insurers may file one set of underwriting guidelines or update to underwriting guidelines on behalf of individual insurers in the group in accordance with the requirements of this section if the group clearly identifies which underwriting guidelines apply to each insurer within the group

(d) An insurer that files underwriting guidelines or updates to underwriting guidelines under this section must submit a filing transmittal form as required by Division 4 of this subchapter (relating to Filings Made Easy--Filing Transmittal Form and Requirements for Property and Casualty Form, Rate, Rule, Underwriting Guideline, and Credit Scoring Model Filings) with the filing for each underwriting guideline and update.

(e) Filings under this division may not be combined with filings made in accordance with Division 5, 6 or 8 of this subchapter (relating to Filings Made Easy--Requirements for Property and Casualty Policy Form, Endorsement, and Manual Rule Filings, Filings Made Easy--Rate and Rate Manual Filing Requirements, and Filings Made Easy--Credit Scoring Models Filing Requirements for Personal Insurance) due to distinct and separate statutes governing underwriting guidelines and credit scoring models.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 8. FILINGS MADE EASY--CREDIT SCORING MODELS FILING REQUIREMENTS FOR PERSONAL INSURANCE

28 TAC §§5.9350 - 5.9352

The new sections are adopted under Insurance Code Articles 5.06, 5.13, 5.13-2, 5.13-2C, 5.35, 5.41-3, 5.55, 5.57, 5.145,

21.49-2U, 21.50 and §36.001 and §38.002. SB 14, as enacted by the 78th Legislature, Regular Session 2003, amended various provisions of Chapter 5 of the Insurance Code, added Chapter 21.49-2U relating to the use of credit scoring, and added §38.002 relating to underwriting guidelines for personal automobile and residential property insurance. Article 5.13(e) provides that the regulatory power conferred in this article is vested in the commissioner. Article 5.13-2 gives the commissioner authority to regulate policy forms, endorsements, and rates for the writing of insurance subject to this article. Article 5.13-2, §5(a) and (a-1) provide that insurers shall file with the commissioner all rates, applicable rating manuals, supplementary rating information, and additional information as required by the commissioner for risks written in this state and that the commissioner by rule shall determine the information required to be provided in the filing. Article 5.13-2, §13(f) provides that county mutual insurance companies that have a group market share of less than 3.5 percent and that issue personal auto policies only at nonstandard rates are subject to rate filing requirements as determined by the commissioner by rule. Article 5.13-2C provides that a residential property insurer that meets certain criteria related to writing more than fifty percent of its policies in underserved areas and servicing low value homes are exempt from the rate filing and approval requirements of Articles 5.142 and 5.13-2. Article 5.41-3, which concerns the writing of commercial group property insurance, provides the requirements for forming a group or association that would be eligible to be written on a commercial group property policy, the form filing and rate filing requirements for such group policies, and that an insurer shall file related information that clearly identifies the group of businesses or the association to be insured. Article 5.55 provides rate standards and rate filing requirements for workers' compensation insurance. Article 5.57 requires the commissioner to prescribe a uniform policy form for workers' compensation insurance, and provides that an insurance company may not use a form other than one prescribed unless the form is an endorsement appropriate to the company's plan of operation and submitted to and approved by the department. Article 5.145, §2 provides that notwithstanding any other provision of the Insurance Code and except as provided in this section, an insurer is governed by the provisions of §8 of Article 5.13-2 relating to policy forms and endorsements for personal automobile and residential property insurance, but that an insurer may continue to use the policy forms and endorsements promulgated, approved, or adopted under Articles 5.06 and 5.35 upon notification to the commissioner in writing. Articles 5.06 and 5.35 set forth filing and approval procedures for motor vehicle insurance and residential property insurance previously not subject to Article 5.13-2. Article 5.145 provides that the commissioner may adopt reasonable and necessary rules to implement this article relating to policy forms for personal and residential property insurance. Article 21.49-2U, relating to the use of credit scoring, provides that the commissioner may adopt rules as necessary to implement this article. Article 21.50 provides the form and rate regulation provisions for mortgage guaranty insurance. Section 38.002 provides that each insurer, as defined, engaged in the business of personal automobile or residential property insurance in this state shall file with the department a copy of the insurer's underwriting guidelines. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 9. FILINGS MADE EASY--REDUCED FILING REQUIREMENTS FOR CERTAIN INSURERS

28 TAC §§5.9355 - 5.9357

The new sections are adopted under Insurance Code Articles 5.06, 5.13, 5.13-2, 5.13-2C, 5.35, 5.41-3, 5.55, 5.57, 5.145, 21.49-2U, 21.50 and §36.001 and §38.002. SB 14, as enacted by the 78th Legislature, Regular Session 2003, amended various provisions of Chapter 5 of the Insurance Code, added Chapter 21.49-2U relating to the use of credit scoring, and added §38.002 relating to underwriting guidelines for personal automobile and residential property insurance. Article 5.13(e) provides that the regulatory power conferred in this article is vested in the commissioner. Article 5.13-2 gives the commissioner authority to regulate policy forms, endorsements, and rates for the writing of insurance subject to this article. Article 5.13-2, §5(a) and (a-1) provide that insurers shall file with the commissioner all rates, applicable rating manuals, supplementary rating information, and additional information as required by the commissioner for risks written in this state and that the commissioner by rule shall determine the information required to be provided in the filing. Article 5.13-2, §13(f) provides that county mutual insurance companies that have a group market share of less than 3.5 percent and that issue personal auto policies only at nonstandard rates are subject to rate filing requirements as determined by the commissioner by rule. Article 5.13-2C provides that a residential property insurer that meets certain criteria related to writing more than fifty percent of its policies in underserved areas and servicing low value homes are exempt from the rate filing and approval requirements of Articles 5.142 and 5.13-2. Article 5.41-3, which concerns the writing of commercial group property insurance, provides the requirements for forming a group or association that would be eligible to be written on a commercial group property policy, the form filing and rate filing requirements for such group policies, and that an insurer shall file related information that clearly identifies the group of businesses or the association to be insured. Article 5.55 provides rate standards and rate filing requirements for workers' compensation insurance. Article 5.57 requires the commissioner to prescribe a uniform policy form for workers' compensation insurance, and provides that an insurance company may not use a form other than one prescribed unless the form is an endorsement appropriate to the company's plan of operation and submitted to and approved by the department. Article 5.145, §2 provides

that notwithstanding any other provision of the Insurance Code and except as provided in this section, an insurer is governed by the provisions of §8 of Article 5.13-2 relating to policy forms and endorsements for personal automobile and residential property insurance, but that an insurer may continue to use the policy forms and endorsements promulgated, approved, or adopted under Articles 5.06 and 5.35 upon notification to the commissioner in writing. Articles 5.06 and 5.35 set forth filing and approval procedures for motor vehicle insurance and residential property insurance previously not subject to Article 5.13-2. Article 5.145 provides that the commissioner may adopt reasonable and necessary rules to implement this article relating to policy forms for personal and residential property insurance. Article 21.49-2U, relating to the use of credit scoring, provides that the commissioner may adopt rules as necessary to implement this article. Article 21.50 provides the form and rate regulation provisions for mortgage guaranty insurance. Section 38.002 provides that each insurer, as defined, engaged in the business of personal automobile or residential property insurance in this state shall file with the department a copy of the insurer's underwriting guidelines. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.9357. Filing Requirements.

(a) Non-standard personal automobile insurance. Insurers required to file under the provisions of Insurance Code Article 5.13-2 may make rate filings for personal automobile according to the requirements described in this subsection if they issue policies only at non-standard rates as defined under Article 5.13-2, §13 and if the insurer and the insurer's affiliated companies or group have a market share of less than 3.5 percent.

(1) Insurers who qualify to file under this subsection shall file in accordance with Division 6 of this subchapter (relating to Filings Made Easy--Rate and Rate Manual Filing Requirements) with the following exceptions:

(A) Insurers must include a Certification of Article 5.13-2, §13 Exemption Compliance (EC-2) with each filing, or in lieu of submitting the EC-2, an insurer may submit a certification of compliance which certifies that the insurer writes only at non-standard rates and the market share of the insurer and the insurer's affiliated companies or group have a market share of less than 3.5 percent.

(B) In lieu of the supporting information required in §5.9332(e) of this subchapter (relating to Filing Requirements), insurers may substitute rate change information as described in §5.9332(e)(5) of this subchapter.

(2) The Certification of Article 5.13-2, §13 Exemption Compliance (EC-2) form is provided by the department for use by insurers seeking an exemption from rate fling and approval requirements pursuant to Article 5.13-2, §13. This form may be obtained from the Texas Department of Insurance website http://www.tdi.state.tx.us or by requesting such form from the Property and Casualty Actuarial Division, Mail Code 105-5F, P.O. Box 149104, Austin, TX 78714-9104.

(b) Underserved residential property. In accordance with Article 5.13-2C, §3(b) insurers otherwise exempt from the rate filing requirements of Insurance Code Article 5.13-2, shall make rate filings in accordance with this subsection. Insurers who qualify to file under this subsection shall file as required in §5.9332(a) - (b) of this subchapter (relating to Filings Made Easy--Rate and Rate Manual Filing Requirements) and must:

(1) include a Certification of Article 5.13-2C Exemption Compliance (EC-1) as specified in §5.3702 of this chapter (relating to Designation of Underserved Areas for Residential Property Insurance for Purposes of the Texas Insurance Code Article 5.13-2C).

(2) submit rate change information when applicable as described in §5.9332(e)(5) of this subchapter.

(c) Additional provisions. The following provisions apply to any rate or rate manual filing made pursuant to subsection (a) or (b) of this section:

(1) The reduced filing requirements provided under this division do not affect the requirements to file supporting data under §5.9941 and §5.9960 of this chapter (relating to Differences in Rates Charged Due Solely to Difference in Credit Scores and Exception to Territory Rating Requirements under Insurance Code Article 5.171). Insurers making a rate or rate manual filing under this division may include supporting data required under §5.9941 and §5.9960 of this title with the filing made under this division.

(2) Any filings that do not fully comply with all of the filing requirements described in this division may be considered incomplete and may be returned to the filer for completion with a notice stating that the filing is not complete and shall identify the additional information that is required for completion of the filing.

(3) The department may request additional information related to a rate filing, including actuarial or other reasonable support of rates, as deemed necessary by the department or commissioner. The insurer shall respond by the date specified in the request.

(4) Filings under this division may be combined with filings made in accordance with Division 5 of this subchapter (relating to Filings Made Easy--Requirements for Property and Casualty Policy Form, Endorsement, and Manual Rule Filings). These combined filings may utilize a single transmittal form. Filings under this division may not be combined with filings made in accordance with Division 7 or 8 of this subchapter (relating to Filings Made Easy--Underwriting Guideline Filing Requirements for Personal Automobile and Residential Property Insurance and Filings Made Easy--Credit Scoring Models Filing Requirements for Personal Insurance) due to distinct and separate statutes governing underwriting guidelines and credit scoring models.

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CHAPTER 19. AGENTS' LICENSING

The Commissioner of Insurance adopts the repeal of Subchapter C, §§19.201 - 19.204, 19.211, and 19.212, concerning written examination for applicants for license to write insurance upon any one life in excess of $10,000 under the Insurance Code Article

21.07, §4A; Subchapter D, §§19.301 - 19.304 and 19.311, concerning written examination for applicants for accident and health insurance agents license under Article 21.07-1, §16; Subchapter E, §19.401, concerning licensing of nonresident agents under Article 21.07; and Subchapter F, §19.501, concerning licensing of local recording agents and solicitors under Article 21.14, §5a. The repeal of these sections is adopted without changes to the proposal published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11255).

Repeal of these sections is necessary because of various legislative changes that occurred as a result of Senate Bill 414, §§8.01 and 3.01 enacted by Acts, 2001, 77th Legislature, which make the sections no longer applicable to insurance agents.

The purpose of this repeal is to delete sections that are no longer necessary.

No comments were received on the proposal.

SUBCHAPTER C. WRITTEN EXAMINATION FOR APPLICANTS FOR LICENSE TO WRITE INSURANCE UPON ANY ONE LIFE IN EXCESS OF $10,000 UNDER THE INSURANCE CODE, ARTICLE 21.07, §4A

28 TAC §§19.201 - 19.204, 19.211, 19.212

The repeals are adopted pursuant to the Insurance Code Article 21.01 and §36.001. Article 21.01, §4 provides that the commissioner may adopt rules as necessary to implement this subchapter and to meet the minimum requirements of federal law and regulations. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. WRITTEN EXAMINATION FOR APPLICANTS FOR ACCIDENT AND HEALTH INSURANCE AGENTS LICENSE UNDER THE INSURANCE CODE, ARTICLE 21.07-1, §16

28 TAC §§19.301 - 19.304, 19.311

The repeals are adopted pursuant to the Insurance Code Article 21.01 and §36.001. Article 21.01, §4 provides that the commissioner may adopt rules as necessary to implement this subchapter and to meet the minimum requirements of federal law and regulations. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

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SUBCHAPTER E. LICENSING OF NONRESIDENT AGENTS UNDER THE INSURANCE CODE, ARTICLE 21.07

28 TAC §19.401

The repeal is adopted pursuant to the Insurance Code Article 21.01 and §36.001. Article 21.01, §4 provides that the commissioner may adopt rules as necessary to implement this subchapter and to meet the minimum requirements of federal law and regulations. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. LICENSING OF LOCAL RECORDING AGENTS AND SOLICITORS

28 TAC §19.501

The repeal is adopted pursuant to the Insurance Code Article 21.01 and §36.001. Article 21.01, §4 provides that the commissioner may adopt rules as necessary to implement this subchapter and to meet the minimum requirements of federal law and regulations. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. USE OF TESTING SERVICE FOR ADMINISTRATION OF AGENT'S QUALIFYING EXAMINATIONS UNDER THE INSURANCE CODE, ARTICLE 21.01-1

28 TAC §§19.1101 - 19.1110

The Commissioner of Insurance adopts the repeal of Subchapter L, §§19.1101 - 19.1110, concerning the use and selection of testing service vendors for licensing examinations. The repeal is adopted without changes to the proposal as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10214).

The repeal of these sections is necessary to allow the department to adopt new rules that address the licensing examination testing services vendor selection procedure. The new rules create a selection process that will allow for preparation of a bid document that is more responsive to current license applicant needs, evolving industry practices, and changing technology.

The purpose of this repeal is to allow the department to adopt new rules that create a selection process that will allow for preparation of a bid document that is more responsive to current license applicant needs, evolving industry practices, and changing technology. Simultaneous to this adopted repeal, the adopted new Subchapter L, §§19.1101 - 19.1104, is published elsewhere in this issue of the *Texas Register*.

No comments were received on the proposal.

The repeal of Subchapter L, §§19.1101 - 19.1110, is adopted pursuant to Insurance Code Article 21.01-1 and §36.001. Article 21.01-1, §1(a) authorizes the commissioner to contract with a licensing examinations testing vendor for testing services and adopt such rules and standards as may be deemed appropriate by the commissioner to implement that authority. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2005.

TRD-200500234
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: February 7, 2005
Proposal publication date: November 5, 2004
For further information, please call: (512) 463-6327

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SUBCHAPTER L. SELECTION OF A TESTING SERVICES VENDOR FOR ADMINISTRATION OF LICENSING EXAMINATIONS

28 TAC §§19.1101 - 19.1104

The Commissioner of Insurance adopts new Subchapter L, §§19.1101 - 19.1104, concerning the selection of a testing services vendor for the administration of licensing examinations. The sections are adopted without changes to the proposed text as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10215).

The new subchapter sets forth an appropriate examination testing vendor selection process implementing the authority granted in Article 21.01-1, §1(a). The new vendor selection process complies with state procurement laws and regulations and establishes that the department shall determine the bid document requirements, including contract specifications and evaluation criteria at the time the bid document is prepared. The process contained in these sections allows the department to develop bid requirements and evaluation criteria at the time of preparation of the bid document, rather than being bound to requirements and standards developed years in advance. In addition to complying with state procurement laws and regulations, the new selection process will thus allow for preparation of a bid document that is more responsive to current license applicant needs, evolving industry practices, and changing technology.

Article 21.01-1, §1(a) requires a Government Code, Chapter 2001 hearing prior to the adoption of rules establishing appropriate standards to implement the authority granted in Article 21.01-1, §1(a). The hearing on this proposal was held on November 30, 2004. In addition to this requirement, the adoption provides that the department shall continue to select the successful vendor at a public hearing called for that purpose. Accordingly, the department will continue to prepare a public bid document stating its requirements for an examination testing services vendor, invite vendor bids on that document, evaluate the vendor bids in accordance with the terms of the bid document, and then select the successful vendor at a public hearing.

The adoption of the repeal of §§19.1101 - 19.1110 is published elsewhere in this issue of the *Texas Register*.

Adopted §19.1101 sets forth the vendor selection process and provides that the department will act in compliance with state procurement statutes, the Insurance Code and the requirements specified in the bid document; that any vendor desiring to be considered must submit a qualifying proposal in response to the bid document; and that the department shall review each proposal to determine its compliance with the bid document's requirements. Adopted §19.1102 directs the department, or its evaluation committee, to evaluate the merits of the qualifying proposals. Adopted §19.1103 states that following the evaluation of vendor bids, the commissioner shall conduct a public hearing and select the successful vendor. Following the hearing the department may negotiate and execute a final written contract with the successful vendor as authorized in Article 21.01-1, §1(a). Adopted §19.1104 clarifies that objections to bid process or vendor selection under this subchapter must comply with the department's vendor procurement protest procedures at §§1.1101 - 1.1107 (Procedures for Vendor Protests of Procurements).

§19.1102: A commenter suggested modifying this section by adding language to require that all examination vendor bids be predicated on the examination vendor providing convincing data to the department that it had the ability to develop examination questions that did not have the effect of unlawfully discriminating against individuals, or class of individuals, taking the examination on the basis of race, color, national origin, or sex; and further that the examination vendor be required to survey, on a voluntary basis, persons taking the examination and to report the survey results annually to the department, both under fixed criteria.

Response: The department appreciates the commenter's concern and agrees that it is extremely important that licensing examinations, or any process regulated by the department, not have the effect of unlawfully discriminating against any individual or class of individuals. Accordingly, the department already has procedures to develop examinations that are nondiscriminatory. This includes reviewing each examination, at least annually, with the examination vendor, using methods of psychometric review to reasonably determine the validity of each examination. In addition to this annual review cycle, the department may also require the examination vendor to conduct additional specific analyses to investigate potential problems. The department also notes that a purpose of this rule is to create a contracting process that is more responsive to current license applicant needs, evolving industry practices, and changing technology and not bound to fixed rule requirements. The department has not made changes to the rule based on this comment.

For with changes: Primerica Life Insurance Company.

Against: None.

These sections are adopted under Insurance Code Article 21.01-1 and §36.001. Article 21.01-1, §1(a) authorizes the commissioner to contract with a licensing examinations testing vendor for testing services and adopt such rules and standards as may be deemed appropriate by the commissioner to implement that authority. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 18, 2005.

TRD-200500233
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: February 7, 2005
Proposal publication date: November 5, 2004
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 365. INVESTMENT RULES

The Texas Water Development Board (the board) adopts amendments to 31 TAC §§365.2, 365.8, 365.13, 365.18 and repeal of Subchapter C, §365.21 and new §365.21 under Subchapter B, concerning Investment Rules without changes to the proposed text as published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11306) and will not be republished.

The amendments to these sections are adopted to clarify board investment procedures and conform board rules with the Public Funds Investment Act, Government Code, Chapter 2256.

The board renames the Subchapter B heading from "Selection of Authorized Dealers" to "Investment Procedures," deletes the title of "Subchapter C," and moves new §365.21 under the renamed Subchapter B. These amendments more accurately group related provisions of the rules under one title and under a common, applicable, heading.

The amendment to §365.2(7) is adopted concerning the definition of the term "Internal Auditor." The board adopts to change the definition from the "Director of Internal Audit" to "internal audit staff." This will allow another member of the internal audit staff to conduct reviews of the investment functions as set forth in various sections of the rules and reflects the addition of staff to the internal audit area.

The amendment to §365.8 is adopted to require the internal audit staff to report to the Audit Committee rather than the Finance Committee when presenting results of the biennial review of investment controls conducted pursuant to §365.18 of the rules. This reflects the board's previous designation of duties of the Audit and Finance Committees.

The board amends §363.13(b)(3) to reduce the stated final maturity date of collateralized mortgage obligations in which the board may invest to not more than seven years. This change will harmonize currently inconsistent references to the maximum maturities in which the board may invest. While §363.13(b)(3) currently prohibits investments with final maturities of greater than ten years (consistent with Government Code §2256.009), §363.17 provides the board's actual policy of allowing investments of reserve funds of up to seven years only, with the consent of the board. The change will make clear that the maximum investment is seven years.

The board amends §365.18, Internal Control, to clarify that the internal auditor's biennial review of the board's investment policies and investment functions is more accurately a review of the "agency's management controls on investments and adherence to the agency's established investment policies," as required by Public Funds Investment Act (Government Code §2256.005). This section is also adopted to reflect the mandatory requirement in the Public Funds Investment Act (Government Code §2256.005) to send the results of the auditor's biennial review to the state auditor.

The board adopts the repeal of Subchapter C, §365.21 and adopts a new §365.21 under Subchapter B incorporating existing language of Subchapter C, §365.21. A new sentence will be added to new §365.21, that reads: "The quarterly reports shall be formally reviewed at least annually by the internal auditor and the result of the review shall be reported to the board." This annual review is required by the Public Funds Investment Act (Government Code §2256.023) and the new §365.21 reflects this requirement.

There were no comments received on the proposed amendments, repeal and new section.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §365.2, §365.8

The amendments are adopted under the authority of the Texas Water Code §6.101, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and the Texas Government Code, Chapter 2256, which requires each State agency to adopt rules regarding the investment of its funds.

There are no statutory provisions affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 19, 2005.

TRD-200500257
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: February 8, 2005
Proposal publication date: December 3, 2004
For further information, please call: (512) 475-2052

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SUBCHAPTER B. INVESTMENT PROCEDURES

31 TAC §§365.13, 365.18, 365.21

The amendments and new section are adopted under the authority of the Texas Water Code §6.101, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and the Texas Government Code, Chapter 2256, which requires each State agency to adopt rules regarding the investment of its funds.

There are no statutory provisions affected by the adopted amendments and new section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 19, 2005.

TRD-200500258
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: February 8, 2005
Proposal publication date: December 3, 2004
For further information, please call: (512) 475-2052

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SUBCHAPTER C. INVESTMENT PROCEDURES

31 TAC §365.21

The repeal is adopted under the authority of the Texas Water Code §6.101, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and the Texas Government Code, Chapter 2256, which requires each State agency to adopt rules regarding the investment of its funds.

There are no statutory provisions affected by the adopted repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 19, 2005.

TRD-200500259
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: February 8, 2005
Proposal publication date: December 3, 2004
For further information, please call: (512) 475-2052

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER E. ACTIVE EMPLOYEES HEALTH REIMBURSEMENT ARRANGEMENTS

34 TAC §§41.101 - 41.104

The Teacher Retirement System of Texas (TRS) adopts the repeal of Subchapter E, Chapter 41, §§41.101 - 41.104 without changes to the proposed repeal published in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10464). These sections relate to Active Employees Health Reimbursement Arrangements. The sections are being repealed because they are no longer needed as a result of the discontinuation of TRS's health reimbursement arrangement (TRS-HRAccount) program.

No comments were received regarding the repeal.

The repeal of these sections is adopted under Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for, among other things, the transaction of business of the board. The repeal is also adopted under article 3.50-8, section 4, Insurance Code, which authorizes TRS, as trustee, to adopt rules to implement the article.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2005.

TRD-200500277
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective date: February 10, 2005
Proposal publication date: November 12, 2004
For further information, please call: (512) 542-6418

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Water Development Board

Title 31, Part 10

The Texas Water Development Board (the board) files this notice of intent to review 31 TAC, Part 10, Chapter 380, Alternative Dispute Resolution, in accordance with the Government Code, §2001.039. The board finds that the reason for adopting the chapter continues to exist.

As required by §2001.039 of the Texas Government Code, the board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in Chapter 380 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Ron Pigott, Attorney, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to Ron.Pigott@twdb.state.tx.us or by fax at (512) 463-5580.

TRD-200500256
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: January 19, 2005

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Adopted Rule Reviews

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) adopts Texas Administrative Code, Title 1, Part 12, Chapter 255 concerning Finance. This review is conducted in accordance with Government Code, §2001.039.

The proposed review was published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2387).

No comments were received regarding adoption of the review.

This concludes the review of Chapter 255.

§255.1. Statewide 9-1-1 Equalization Surcharge.

§255.2. Definition of Intrastate Long-Distance Service.

§255.4. Definition of a Local Exchange Access Line or an Equivalent Local Exchange Access Line.

§255.5. Optional Use of an Uncollectible Factor.

§255.7. 9-1-1 Service Fee and Surcharge Billing and Remittance Authorization.

§255.8. 9-1-1 District Funding Policy.

TRD-200500351
Paul Mallett
Executive Director
Commission on State Emergency Communications
Filed: January 26, 2005

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Texas Workers' Compensation Commission

Title 28, Part 2

In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, §9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature, and pursuant to the notice of intention to review published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11393), the Texas Workers' Compensation Commission (the commission) has assessed whether the reason for adopting or readopting these rules continues to exist. No comments were received regarding the review of these rules.

As a result of the review, the Commission has determined that the reason for adoption of these rules continues to exist. Therefore, the Commission readopts Chapter 180. If the Commission determines that the rules should be revised or repealed, the repeal or revisions of the rules will be accomplished in accordance with the Administrative Procedure Act.

CHAPTER 180 - MONITORING AND ENFORCEMENT

§180.1. Definitions.

§180.2. Referrals.

§180.3. Compliance Audits.

§180.5. Access to Workers' Compensation Related Records.

§180.6. Evidence of Patterns of Practice.

§180.7. Date Violation Deemed to Have Occurred; Establishing Willful Violations.

§180.8. Notices of Violation, Warning Letters, and Notices of Intent.

§180.10. Duration and Extent of Noncompliance.

§180.11. Compliance Categories.

§180.12. Compliance Standards and Compliance Rates.

§180.13. Warning Letter Criteria; Relevant Time Period.

§180.14. General Provisions for Penalty Calculations.

§180.15. Base Penalties.

§180.16. Review Modifiers.

§180.17. Audit Modifiers.

§180.18. Applicability.

§180.20. Commission Approved Doctor List.

§180.21. Commission Designated Doctor List.

§180.22. Health Care Provider Roles and Responsibilities.

§180.23. Commission Required Training for Doctors/Certification Levels.

§180.24. Financial Disclosure.

§180.25. Improper Inducements, Influence and Threats.

§180.26. Doctor and Insurance Carrier Sanctions.

§180.27. Sanctions Process/Appeals/Restoration/Reinstatement.

TRD-200500290
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: January 24, 2005

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Aging and Disability Services

Open Solicitation #2 for Burleson County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 Texas Administrative Code (TAC) §19.2324(c), secondary selection process, the Department of Aging and Disability Services (DADS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Burleson County, County #026**. Medicaid nursing facility occupancy rates in **Burleson County** exceeded the 90% occupancy threshold for six consecutive months during the period of **May 2004 through October 2004**. The county occupancy rates for each month of that period were: **98.9%, 99.0%, 94.6%, 99.0%, 100.0%, 98.7%**. In accordance with the requirements contained in 40 TAC §19.2324(c), DADS will allocate up to **90** Medicaid beds to an eligible applicant that desires to construct a new nursing facility or to construct an addition to an existing nursing facility. Applicants for additional Medicaid beds must demonstrate a history of quality care as specified in 40 TAC §19.2322(e). Applicants must submit a written reply as described in 40 TAC §19.2324(c)(4) to Joe D. Armstrong, Department of Aging and Disability Services, Licensing and Credentialing Section, Regulatory Services, Mail Code E-342, P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by DADS before the close of business March 7, 2005, the published ending date of the open solicitation period. If one or more applicants are eligible for additional Medicaid beds, DADS will allocate Medicaid beds in accordance with 40 TAC §19.2324(c)(5). If no application for the secondary selection process is received or if no applicant meets the requirements in §19.2324(c), no further solicitation will occur.

TRD-200500336
Phoebe Knauer
General Counsel
Department of Aging and Disability Services
Filed: January 25, 2005

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Open Solicitation #2 for Terry County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 Texas Administrative Code (TAC) §19.2324(c), secondary selection process, the Department of Aging and Disability Services (DADS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Terry County, County #223**. Medicaid nursing facility occupancy rates in **Terry County** exceeded the 90% occupancy threshold for six consecutive months during the period of **May 2004 through October 2004**. The county occupancy rates for each month of that period were: **93.4%, 92.1%, 91.9%, 90.7%, 92.5%, 91.2%**. In accordance with the requirements contained in 40 TAC §19.2324(c), DADS will allocate up to **90** Medicaid beds to an eligible applicant that desires to construct a new nursing facility or to construct an addition to an existing nursing facility. Applicants for additional Medicaid beds must demonstrate a history of quality care as specified in 40 TAC §19.2322(e). Applicants must submit a written reply as described in 40 TAC §19.2324(c)(4) to Joe D. Armstrong, Department of Aging and Disability Services, Licensing and Credentialing Section, Regulatory Services, Mail Code E-342, P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by DADS before the close of business March 7, 2005, the published ending date of the open solicitation period. If one or more applicants are eligible for additional Medicaid beds, DADS will allocate Medicaid beds in accordance with 40 TAC §19.2324(c)(5). If no application for the secondary selection process is received or if no applicant meets the requirements in §19.2324(c), no further solicitation will occur.

TRD-200500335
Phoebe Knauer
General Counsel
Departement of Aging and Disability Services
Filed: January 25, 2005

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Public Notice Announcing Pre-application Orientation (PAO) for Enrollment of Medicaid Waiver Program Providers

The Department of Aging and Disability Services (DADS) will hold a Pre-Application Orientation (PAO) for persons seeking to participate as a program provider in the Home and Community-Based Services (HCS) Program.

The PAO will be held at 8:30 a.m., Monday, May 9, 2005, in Austin, Texas at the J. J. Pickle Center. Persons wanting to attend the PAO must request a registration form by mail or by fax. Mailed requests must be addressed to Bill Fordyce, Enrollment/Sanctions Manager, Provider Services Division, DADS, P.O. Box 149030 MC W-535, Austin, Texas 78714-9030. Faxed requests must be made to (512) 438-3555.

Upon an applicant's written request, DADS will provide the applicant with information regarding the provider application and enrollment processes and a registration form for the PAO. To attend the PAO, an applicant must submit a completed registration form to DADS in a timely manner. DADS considers a completed registration form submitted in a timely manner only under the following conditions: (1) if mailed via the US Postal Service, the completed registration form bears a postmark date no later than April 11, 2005; (2) if sent via a common or contract carrier, a receipt by the carrier shows that it was placed in the hands of the carrier no later than April 11, 2005; or (3) if hand delivered, it is delivered directly to the Provider Services Division, DADS, 701 W. 51st Street, MC W-535, Austin, Texas, no later than April 11, 2005.

Persons requiring an interpreter for the deaf or hearing impaired or other accommodation must contact Bill Fordyce at (512) 438-3544 or the TTY phone number of Texas Relay at 1-800-735-2988 at least 72 hours before the PAO. Bill Fordyce may also be contacted for any other information concerning the PAO.

TRD-200500264
Phoebe Knauer
General Counsel
Department of Aging and Disability Services
Filed: January 20, 2005

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Office of the Attorney General

Texas Clean Air Act and Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act and Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *Harris County, Texas and the State of Texas, by and through the Texas Commission on Environmental Quality v. Equistar Chemicals, LP*, Cause No. 2004-68487; in the 61st Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendant is in the chemical manufacturing business. Defendant reported the release of ethylene oxide from its unit of which amount exceeded the permitted level allowed. This release violated the Texas Clean Air Act, as well as the Air Quality Permit.

Proposed Agreed Judgment: Defendant agrees to the State and Harris County $15,750.00 in civil penalties and $1,600.00 in attorney's fees of which both amounts will be split equally between Harris County and State of Texas, plus all court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Lisa Sanders Richardson, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication you may contact A.G. Younger, Agency Liaison at (512) 463-2110.

TRD-200500349
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: January 26, 2005

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Texas Building and Procurement Commission

Request for Proposal

RFP Number: #303-5-10652

Opening Date/Time: February 24, 2005 at 3:00 PM

Description: Lease requirement for approximately 7,147 sq. ft. of Laboratory Space in Garland, Dallas County, Texas

Agency: Department of Public Safety (DPS)

Purchaser/Contact: Kenneth Ming (512) 463-2743 or through the Electronic State Business Daily at:

http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=57374

TRD-200500358
Mark Gentle
Legal Counsel
Texas Building and Procurement Commission
Filed: January 26, 2005

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 13, 2005, through January 20, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on January 26, 2005. The public comment period for these projects will close at 5:00 p.m. on February 25, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Vista del Sol LNG Terminal, LP; Location: The project is located near Ingleside, San Patricio County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Gregory, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 670932; Northing: 3085466. Project Description: Vista del Sol proposes to construct and operate a new Liquid Natural Gas (LNG) import, storage, and vaporization terminal on the northern shoreline of Corpus Christi Bay. The LNG terminal would be located on a 310.8-acre site on the La Quinta Channel, between the cities of Portland and Ingleside in San Patricio and Nueces Counties, Texas. In addition, Vista del Sol proposes to construct and operate a new natural gas pipeline extending from the LNG terminal to an interconnect site near Sinton, Texas. This Project would allow LNG to be imported from areas with natural gas reserves throughout the world to the LNG terminal on ocean-going LNG carrier ships. At the LNG terminal, LNG could be unloaded, stored, and regasified for delivery via pipeline. The pipeline would allow natural gas from the LNG terminal to be sent to markets throughout Texas and the United States via interconnections with a number of existing intrastate and interstate pipeline systems. The combined port and pipeline project will impact approximately 24.59 acres of jurisdictional wetlands and waters of the United States.

The following section describes the proposed LNG terminal, LNG ships, and pipeline facilities in relation to the project plans: The LNG terminal would include a ship berth and unloading facilities (marine terminal), three LNG storage tanks, vapor handling equipment, five LNG vaporizers and related regasification systems, and various utilities and support facilities. The LNG terminal would be located on the La Quinta Channel between the existing Sherwin Alumina Company (Sherwin) plant on the north and west sides, and the Occidental Chemical Corporation (OxyChem) and DuPont manufacturing plants on the east site. The LNG terminal would include an unloading slip approximately 1,250 feet wide by 1,550 feet long that would be constructed by dredging the southern portion of the 310.8-acre site to a depth of 42 feet below mean lower low water (MLLW). Construction of the unloading slip off of the La Quinta Channel would provide

protected berths for the offloading LNG vessels. In addition, a turning basin would be dredged out of the La Quinta Channel at the entrance of the slip to allow for ship maneuvering. The slip would consist of two 1,289-foot-long berths designed for both port and starboard mooring. The berths would include a single-level unloading platform consisting of reinforced concreted deck and beams supported on piles. The berths would be designed to support the LNG unloading arms and vapor return arm, plus associated valves and piping, a gangway tower, firewater monitors, anemometer, and firewater monitor pumps. The berth includes three breasting dolphins that would accommodate lateral loads from moored ships in the berths and protect the unloading platform. Each breasting dolphin would be constructed of reinforced concrete structures on piles and fitted with a remotely operated quick-release triple mooring hook and an energy-absorbing fender. Side slopes within each berth would be protected with rock riprap or cabled concrete block mattresses. Six mooring dolphins, comprised of reinforced concrete structures on piles, would be installed in each berth. The breasting and mooring dolphins would be connected to the unloading platform by steel truss walkways. The LNG would be stored in three insulated, full-containment tanks, each sized to store a working capacity of 155,000 m3 (975,000 barrels) of LNG at a temperature of -256 degrees Fahrenheit and a normal operating pressure of 1 to 3 pounds per square inch gauge (psig).

The following section describes the proposed excavation and dredging at the terminal site and ship maneuvering area (turning basin) along the La Quinta Channel: Construction of the slip would begin by excavating the top 23 to 24 feet of overburden down to or near the water table. The total quantity of dry materials that would be excavated from the slip is estimated to be approximately 1.6 million cubic yards (mcy). A portion of this material would be used for fill during construction at the site. The majority of the excavated material would be stored at the north end of the LNG terminal site where it would be made available to other projects. Following excavation of the dry materials, dredging would begin from the edge of the La Quinta Channel into the slip area and then proceed inland. The total dredged volume at the marine terminal would be approximately 5.8 mcy and would extend to a depth of 42 feet below MLLW. Approximately 3.1 mcy would be dredged at the slip and 1.6 mcy would be dredged from the edge of the existing channel to the slip (north side of turning basin). As currently proposed, about 1.1 mcy would also be dredged from the south edge of the existing channel to the dredge limits of the turning basin.

A majority of the sediments would be removed using a hydraulic dredge (a cutterhead dredge) which would pump the water-sediment slurry through a temporary pipeline to the Beneficial Use (BU) site. Dredging activities would occur on a 24-hour basis, 7 days per week. The dredge material pipeline would include segments that are floating, submerged, and cut in, to eliminate potential navigational hazards to ships arriving or departing the adjacent Sherwin facility. Vista del Sol would mark all floating and submerged pipeline segments according to Coast Guard regulations and a Notice of Mariners would be filed through the Coast Guard. All floating equipment would be lighted and personnel would be present 24 hours a day to ensure safety. Additional dredging of about 0.5 mcy would be performed at the intersection of the La Quinta Channel and the Corpus Christi Channel to a depth of 42 feet below MLLW. This would provide additional space for the largest LNG ships to turn and enter the La Quinta Channel. The dredge material from this site would be placed in Dredge Material Placement Area (DMPA) 10.

The following section describes the proposed LNG pipeline, and its associated aboveground facilities: A 25.3-mile-long, 36-inch-diameter pipeline would be constructed from the LNG terminal to a point north of Sinton, Texas. The pipeline would begin at the LNG storage and vaporization facilities and immediately downstream of the metering station in the LNG terminal. The pipeline route then extends generally northwesterly to its terminus. Construction of the pipeline facilities would disturb a total of about 423.7 acres of land, including the pipeline construction rights-of-way, temporary extra workspace, a pipe storage yard, aboveground facilities, and access roads. Of this total, approximately 2.94 acres of jurisdictional wetlands will be impacted by the pipeline construction. Following construction, a 50-foot-wide permanent right-of-way would be retained for operation and maintenance of the pipeline.

Vista del Sol would construct its pipeline across several wetland areas and water bodies. In wetland areas, a temporary board road would be installed to allow passage of equipment with minimal disturbance of the surface and vegetation in wetlands. A vegetative buffer zone would be left between the wetland and the upland construction areas except for the pipe trench itself and erosion control measures (e.g., silt fences, interceptor levees, and hay bale structures) would be installed and maintained to minimize sedimentation within the wetland. Trench plugs would be installed where necessary to prevent the unintentional draining of water from the wetland. After construction, the right-of-way would be restored and trees greater than 15 feet high would not be allowed to grow within 15 feet of the pipeline. In order to maintain a relatively narrow right-of-way in saturated wetlands, Vista del Sol could employ a "push-pull" or "float" technique to avoid the need from stringing the pipeline adjacent to the trench. Vista del Sol proposes to install the pipeline across small perennial or intermittent water bodies (primarily road or irrigation ditches) using opencut crossing methods. Intermittent streams that are dry at the time of crossing would be crossed using conventional upland construction techniques described above. Water bodies (including creeks and some ditches) might also be crossed using the horizontal directional drill (HDD) or bore methods.

The following section describes the proposed mitigation for the proposed LNG terminal, and pipeline facilities: Vista del Sol anticipates that the dredged material would be used to help mitigate impacts on seagrasses and wetlands that would be disturbed during construction of the marine terminal. Vista del Sol has submitted a conceptual plan that would involve creating a 414-acre BU site. Construction of the BU site would begin by using the dredge materials to create a perimeter berm around shallow water areas west of DMPA 13. After the dredge materials are in place around the perimeter, the berm would be shaped and the exterior face would be armored with riprap. Materials dredged from the slip and the turning basin would then be transported to the BU site and used to fill the area within the perimeter berm. The area within the BU site would generally be brought from elevations that currently range in depth from about -4.0 to -11.5 feet MLLW to a depth of about -1.2 feet MLLW. After all of the dredged materials have been placed in the BU site, Vista del Sol would recontour the BU site (e.g., creating terraces and internal channels) and plant seagrasses and wetland vegetation. Breaks in the outer perimeter would be added to allow water circulation within the BU site. Vista del Sol proposes to create approximately a 413-acre BU site, which will include emergent marsh and seagrass habitat within the BU site.

CCC Project No.: 05-0110-F1; Type of Application: U.S.A.C.E. permit application #23611 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Seahorse Development Company; Location: The project is located along Drum Bay and the Gulf of Mexico, at 5220 Blue Water Highway, in Surfside, Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Christmas Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone

15; Easting: 289030; Northing: 3214452. Project Description: The applicant proposes to permanently fill 0.68 acres (0.33 acres of tidal fringe bayfront and 0.35 acres of Gulf palustrine wetlands) within a 108.1-acre project site. The applicant proposes to temporarily impact 0.06 acres of tidal fringe bayfront wetlands and 0.13 acres of Gulf palustrine wetlands (totaling 0.19 acres) during construction. These areas would be totally restored. Approximately 57 acres of tidal fringe wetlands and 0.22 acres of palustrine wetlands will be avoided by the project.

The applicant also proposes to construct a 40-foot long by 4-foot wide crabbing pier with a 14-foot wide by 4-foot long T-head, a 100-foot long by 4-foot wide fishing pier with a 44-foot wide by 4-foot long Thead, walking trails, 6 dune walkovers, and a 28-foot 10-inch long by 6-foot wide bird observation tower for a residential development. Permanent impacts to tidal fringe wetlands will be offset by preserving the 57 acres avoided by the project and placing them under a conservation easement to be held by the Cradle of Texas Conservancy. The permanent impacts to palustrine wetlands will be offset by preserving 1.99 acres (estimate of 50% Gulf wetlands and 50% buffer uplands) that will also be placed under a conservation easement to be held by the Cradle of Texas Conservancy.

CCC Project No.: 05-0113-F1; Type of Application: U.S.A.C.E. permit application #21669(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Velasco Drainage District; Location: The project is located in a re-routed portion of East Union Bayou, at the approach and discharge channels to the existing East Levee Pump Station, approximately 1.7 miles southeast of the intersection of East Levee Road and SH 332, in Brazoria County, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 274926; Northing: 3205611. Project Description: The applicant proposes an expansion to the East Levee Pump Station to increase flood discharge capacity and reduce potential flooding in the Clute-Lake Jackson drainage area. The existing pump station was constructed in 1982. The current project includes the discharge of approximately 500 cubic yards of fill into 0.09 acre of open water and the excavation 2,881 cubic yards of sand and clay from 0.40 acres of the approach and discharge channels to expand the existing pump station. Five additional pumps, each with an 8-foot-diameter discharge pipe, and a concrete flow attenuation structure will be installed. Temporary cofferdams will also be placed within the approach and discharge channels during construction. Initial construction would consist of installing 2 of the 5 proposed pumps. The 3 remaining pumps will be added, as needed, to accommodate increasing drainage needs. The additional pumps and the 3 existing pumps will have a total discharge rate of 2.05 million gpm, or approximately 260,000 gpm/pump. CCC Project No.: 05-0114-F1; Type of Application: U.S.A.C.E. permit application #12348(05) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Gwen Spriggs, Council Administrative Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or gwen.spriggs@glo.state.tx.us. Comments should be sent to Ms. Spriggs at the above address or by fax at (512) 475-0680.

TRD-200500338
Larry L. Laine
Chief Clerk, Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: January 25, 2005

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Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

The Coastal Coordination Council published Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program in the January 28, 2005, issue of the *Texas Register* (30 TexReg 419).

The Council is correcting the dates of publication on the Council's web site and the close of the comment period. The text as published on January 28, 2005, read: "The notice was published on the web site on January 12, 2005. The public comment period for these projects will close at 5:00 p.m. on February 11, 2005." The text should read as follows: "The notice was published on the web site on January 19, 2005. The public comment period for these projects will close at 5:00 p.m. on February 18, 2005."

Further information regarding the Coastal Management Program may be obtained from Ms. Gwen Spriggs, Council Administrative Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or gwen.spriggs@glo.state.tx.us. Comments should be sent to Ms. Spriggs at the above address or by fax at (512) 475-0680.

TRD-200500339
Larry L. Laine
Chief Clerk, Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: January 25, 2005

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Comptroller of Public Accounts

Notice of Contract Award

The Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces the award of a contract under Request for Proposals (RFP #170b), for Global Tactical Asset Allocation investment management services for the Texas Guaranteed Tuition Plan, the state's prepaid higher education tuition program (Program).

The Comptroller announces that a contract is awarded to: UBS Global Asset Management (Americas), Inc., located at UBS Tower, One North Wacker Drive, Chicago, Illinois 60606. The term of the contract is on or about January 5, 2005, through December 31, 2009. The Board shall have the right, its sole discretion, to renew the Contract for up to two (2) additional one (1) year periods, one year (1) at a time. The total amount of the Contract is calculated as an annual fee based on the fair market value of the assets managed.

The Request for Proposals was issued on Friday, October 22, 2004, after 2:00 p.m. CZT. The notice of the Request for Proposals was published on Friday, October 22, 2004, at 29 TexReg 9938. The Contract activities commenced on or about January 5, 2005.

TRD-200500276

Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: January 20, 2005

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003, 303.005, and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 01/31/05 - 02/06/05 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 01/31/05 - 02/06/05 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Sec. 303.005 [3] for the period of 02/01/05 - 02/28/05 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Sec. 303.005 for the period of 02/01/05 - 02/28/05 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-200500328
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 24, 2005

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Commission on State Emergency Communications

Wireless Emergency Service Fee Distribution Allocation Worksheet

The Commission on State Emergency Communications voted at it's January 20, 2005 meeting to publish for comment the following recommended percentages for wireless revenue distributions. These are the same percentages that were published in the January 20, 2005 Commission notebook.

If there are no substantive changes to the percentages, an agenda item requesting their adoption will be posted for the next meeting of the Commission, tentatively scheduled for February.

Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from November 10, 2004 - November 9, 2005
CSEC STAFF RECOMMENDATION FOR ADOPTION

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Atascosa	41,187			41,187	
Bandera	19,254			19,254	
Frio	16,296			16,296	
Gillespie	22,095			22,095	
Karnes	15,371			15,371	
Kendall	26,439			26,439	
Wilson	35,769			35,769	
AACOG Total	**176,411**			**176,411**	**0.7976%**
Bowie	91,101			91,101	
Cass	30,413			30,413	
Delta	5,464			5,464	
Franklin	9,580			9,580	
Hopkins	32,478			32,478	
Lamar	49,291			49,291	
Morris	12,832			12,832	
Red River	14,178			14,178	
Titus	28,990			28,990	
ATCOG Total	**274,327**			**274,327**	**1.2403%**
Burleson	17,457			17,457	
Grimes	24,492			24,492	
Leon	16,068			16,068	
Madison	13,275			13,275	
Robertson	15,910			15,910	
Washington	30,993			30,993	
BVDC Total	**118,195**			**118,195**	**0.5344%**
Bastrop	66,988			66,988	
Blanco	8,974			8,974	
Burnet	37,511			37,511	
Caldwell	35,008			35,008	
Fayette	22,973			22,973	
Hays	115,967			115,967	
Lee	16,524			16,524	
Llano	18,142			18,142	
Travis	859,408			859,408	
Williamson	295,368			295,368	
CAPCO Total	**1,476,863**			**1,476,863**	**6.6770%**

Data Source: July 1, 2003 Population Estimates from the Texas State Data Center/Office of the State Demographer in October 2004. Web Site Address: http://txsdc.utsa.edu/tpepp/txpopest.php.

Commission on State Emergency Communications
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CSEC STAFF RECOMMENDATION FOR ADOPTION

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Bell	250,321			250,321	
Coryell	74,781			74,781	
Hamilton	8,360			8,360	
Lampasas	19,327			19,327	
Milam	25,190			25,190	
Mills	5,064			5,064	
San Saba	6,199			6,199	
CTCOG Total	**389,242**			**389,242**	1.7598%
Aransas	23,877			23,877	
Bee	32,958			32,958	
Brooks	7,827			7,827	
Duval	12,971			12,971	
Jim Wells	39,770			39,770	
Kenedy	398			398	
Kleberg	31,511			31,511	
Live Oak	12,417			12,417	
McMullen	872			872	
Nueces	314,339	Corpus Christi	(278,907)	35,432	
Refugio	7,482			7,482	
San Patricio	68,251	Portland	(15,392)		
		Aransas Pass	(8,432)	44,427	
CBCOG Total	**552,673**			**249,942**	1.1300%
Coke	3,881			3,881	
Concho	3,918			3,918	
Crockett	4,025			4,025	
Irion	1,791			1,791	
Kimble	4,489			4,489	
McCulloch	8,226			8,226	
Mason	3,770			3,770	
Menard	2,375			2,375	
Reagan	3,173			3,173	
Schleicher	2,895			2,895	
Sterling	1,375			1,375	
Sutton	4,089			4,089	
Tom Green	103,746			103,746	
CVCOG Total	**147,753**			**147,753**	0.6680%

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Angelina	81,332			81,332	
Houston	23,577			23,577	
Jasper	35,910			35,910	
Nacogdoches	60,735			60,735	
Newton	14,787			14,787	
Polk	43,766			43,766	
Sabine	10,121			10,121	
San Augustine	8,973			8,973	
San Jacinto	23,001			23,001	
Shelby	25,421			25,421	
Trinity	13,883			13,883	
Tyler	21,127			21,127	
DETCOG Total	**362,633**			**362,633**	1.6395%
Anderson	55,618			55,618	
Camp	12,321			12,321	
Cherokee	47,851	Reklaw	(351)	47,500	
Gregg	113,624	Kilgore	(11,494)		
		Longview	(74,791)	27,339	
Marion	10,719			10,719	
Panola	22,684	Tatum	(1,167)	21,517	
Rains	10,606			10,606	
Upshur	36,356			36,356	
Van Zandt	50,390			50,390	
Wood	38,688			38,688	
ETCOG Total	**398,857**			**311,054**	1.4063%
De Witt	20,489			20,489	
Goliad	7,188			7,188	
Gonzales	19,058			19,058	
Jackson	14,660			14,660	
Lavaca	19,443			19,443	
Victoria	85,051			85,051	
GCRPC Total	**165,889**			**165,889**	0.7500%
Bosque	17,665			17,665	
Falls	18,517			18,517	
Freestone	18,934			18,934	
Hill	33,687			33,687	

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	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Limestone	22,435			22,435	
HOTCOG Total	**111,238**			**111,238**	**0.5029%**
Brazoria	262,107	Pearland	(48,424)	213,683	
Chambers	28,426			28,426	
Colorado	20,889			20,889	
Fort Bend	411,096	Katy	(13,060)		
		Meadows	(5,336)		
		Missouri City	(61,792)		
		Stafford	(18,337)		
		Sugar Land	(72,785)	239,786	
Liberty	75,246			75,246	
Matagorda	38,007			38,007	
Walker	63,297			63,297	
Waller	35,717	Waller	(2,254)	33,463	
Wharton	42,107			42,107	
HGAC Total	**976,892**			**754,904**	**3.4130%**
Hidalgo	635,851			635,851	
Willacy	20,532			20,532	
LRGVDC Total	**656,383**			**656,383**	**2.9676%**
Dimmit	10,133			10,133	
Edwards	1,958			1,958	
Kinney	3,347			3,347	
La Salle	5,865			5,865	
Maverick	50,006			50,006	
Real	3,079			3,079	
Uvalde	26,084			26,084	
Val Verde	46,471			46,471	
Zavala	11,426			11,426	
MRGDC Total	**158,369**			**158,369**	**0.7160%**
Archer	9,164			9,164	
Baylor	4,041			4,041	
Clay	11,335			11,335	
Cottle	1,751			1,751	
Foard	1,573			1,573	
Hardeman	4,516			4,516	
Jack	8,791			8,791	

Data Source: July 1, 2003 Population Estimates from the Texas State Data Center/Office of the State Demographer in October 2004. Web Site Address: http://txsdc.utsa.edu/tpepp/txpopest.php.

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CSEC STAFF RECOMMENDATION FOR ADOPTION

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Montague	19,541			19,541	
Young	17,929			17,929	
NRPC Total	**78,641**			**78,641**	**0.3555%**
Collin	593,419	Dallas	(46,850)		
		Frisco	14,866		
		Garland	-		
		Plano	(243,362)		
		Richardson	(25,255)		
		Sachse			
		Wylie	(21,084)	271,734	
Dallas		Balch Springs	19,736		
		Cockrell Hill	4,437		
		Sachse	11,713		
		Seagoville	11,100		
		Wilmer	3,663	50,649	
Ellis	124,517	Cedar Hill	(73)		
		Ennis	(17,658)		
		Glenn Heights	(1,753)		
		Grand Prairie	(50)		
		Mansfield	(89)		
		Ovilla	311	105,205	
Erath	33,648			33,648	
Hood	44,583			44,583	
Hunt	80,385			80,385	
Johnson	140,077	Burleson	(21,567)		
		Mansfield	(687)	117,823	
Kaufman	81,637	Combine	676	82,313	
Navarro	47,680			47,680	
Palo Pinto	27,341			27,341	
Parker	98,793	Azle	(1,602)	97,191	
Rockwall	55,212	Dallas			
		Rowlett	(7,175)		
		Wylie	(232)	47,805	
Somervell	7,572			7,572	
Wise	52,888			52,888	
NCTCOG Total	**1,387,752**			**1,066,817**	**4.8232%**
Andrews	12,946			12,946	
Borden	695			695	

Data Source: July 1, 2003 Population Estimates from the Texas State Data Center/Office of the State Demographer in October 2004. Web Site Address: http://txsdc.utsa.edu/tpepp/txpopest.php.

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Wireless Emergency Service Fee Distribution Allocation Worksheet
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CSEC STAFF RECOMMENDATION FOR ADOPTION

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Crane	3,923			3,923	
Dawson	14,361			14,361	
Gaines	14,656			14,656	
Glasscock	1,310			1,310	
Loving	63			63	
Martin	4,625			4,625	
Pecos	16,232			16,232	
Reeves	12,782			12,782	
Terrell	976			976	
Upton	3,225			3,225	
Ward	10,397			10,397	
Winkler	6,730			6,730	
PBRPC Total	**102,921**			**102,921**	**0.4653%**
Armstrong	2,102			2,102	
Briscoe	1,691			1,691	
Carson	6,467			6,467	
Castro	7,830			7,830	
Childress	7,531			7,531	
Collingsworth	3,017			3,017	
Dallam	6,234			6,234	
Deaf Smith	18,394			18,394	
Donley	3,886			3,886	
Gray	22,129			22,129	
Hall	3,900			3,900	
Hansford	5,292			5,292	
Hartley	5,445			5,445	
Hemphill	3,344			3,344	
Hutchinson	22,990			22,990	
Lipscomb	3,035			3,035	
Moore	20,229			20,229	
Ochiltree	8,984			8,984	
Oldham	2,195			2,195	
Parmer	9,779			9,779	
Roberts	827			827	
Sherman	3,205			3,205	
Swisher	7,942			7,942	
Wheeler	4,983			4,983	
PRPC Total	**181,431**			**181,431**	**0.8203%**

Data Source: July 1, 2003 Population Estimates from the Texas State Data Center/Office of the State Demographer in October 2004. Web Site Address: http://txsdc.utsa.edu/tpepp/txpopest.php.

Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from November 10, 2004 - November 9, 2005
CSEC STAFF RECOMMENDATION FOR ADOPTION

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Brewster	9,265			9,265	
Culberson	2,789			2,789	
Hudspeth	3,499			3,499	
Jeff Davis	2,205			2,205	
Presidio	7,747			7,747	
RGCOG Total	**25,505**			**25,505**	**0.1153%**
Hardin	49,275			49,275	
Jefferson	250,707			250,707	
Orange	85,115			85,115	
SETRPC Total	**385,097**			**385,097**	**1.7411%**
Bailey	6,369			6,369	
Cochran	3,577			3,577	
Crosby	6,742			6,742	
Dickens	2,728			2,728	
Floyd	7,305			7,305	
Garza	5,103			5,103	
Hale	36,197	Abernathy	(2,897)		
		Plainview	(22,084)	11,216	
Hockley	22,606			22,606	
Kent	822			822	
King	344			344	
Lamb	14,699			14,699	
Lynn	6,412			6,412	
Motley	1,353			1,353	
Terry	12,366			12,366	
Yoakum	7,140			7,140	
SPAG Total	**133,763**			**108,782**	**0.4918%**
Jim Hogg	5,230			5,230	
Starr	57,541			57,541	
Webb	215,269			215,269	
Zapata	13,734			13,734	
STDC Total	**291,774**			**291,774**	**1.3191%**
Cooke	38,007			38,007	
Fannin	32,646			32,646	
Grayson	115,394	Denison	(23,205)		

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	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
		Sherman	(36,243)	55,946	
TCOG Total	**186,047**			**126,599**	**0.5724%**
Brown	38,231			38,231	
Callahan	13,308			13,308	
Coleman	9,120			9,120	
Comanche	14,249			14,249	
Eastland	18,269			18,269	
Fisher	4,214			4,214	
Haskell	5,870			5,870	
Jones	20,407	Abilene	(5,488)	14,919	
Knox	4,097			4,097	
Mitchell	9,617			9,617	
Nolan	15,325			15,325	
Runnels	11,141			11,141	
Scurry	16,093			16,093	
Shackelford	3,183			3,183	
Stephens	9,678			9,678	
Stonewall	1,564			1,564	
Throckmorton	1,598			1,598	
WCTCOG Total	**195,964**			**190,476**	**0.8612%**
Smith	183,582			183,582	
9-1-1 Network of East Texas	**183,582**			**183,582**	**0.8300%**
Jones		Abilene	5,488	5,488	
Taylor	125,751			125,751	
Abilene/Taylor Cty. 9-1-1	**125,751**			**131,239**	**0.5933%**
Austin	25,284			25,284	
Austin Cty. Emg. Comm. District	**25,284**			**25,284**	**0.1143%**
Bexar	1,463,537			1,463,537	
Comal	87,553			87,553	
Guadalupe	98,227			98,227	
Bexar Metro 9-1-1 Network District	**1,649,317**			**1,649,317**	**7.4567%**
Brazos	161,304			161,304	
Brazos Cty. Emerg. Comm. District	**161,304**			**161,304**	**0.7293%**

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Commission on State Emergency Communications
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CSEC STAFF RECOMMENDATION FOR ADOPTION

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Calhoun	20,983			20,983	
Calhoun Cty. 9-1-1 Emg. Comm. District	**20,983**			**20,983**	**0.0949%**
Cameron	365,095			365,095	
Cameron Cty. Emg. Comm. District	**365,095**			**365,095**	**1.6506%**
Dallas	2,284,665	Addison	(14,579)		
		Balch Springs	(19,736)		
		Carrollton	(51,319)		
		Cedar Hill	(38,201)		
		Cockrell Hill	(4,437)		
		Combine	(676)		
		Coppell	(38,078)		
		Dallas	(1,136,396)		
		DeSoto	(41,588)		
		Duncanville	(35,576)		
		Farmers Branch	(27,305)		
		Garland	(219,377)		
		Glenn Heights	(6,470)		
		Grand Prairie	(105,600)		
		Highland Park	(8,566)		
		Hutchins	(2,790)		
		Irving	(194,742)		
		Lancaster	(27,044)		
		Lewisville	(303)		
		Mesquite	(128,480)		
		Ovilla	(311)		
		Richardson	(74,056)		
		Rowlett	(43,890)		
		Sachse	(11,713)		
		Seagoville	(11,100)		
		University Park	(22,875)		
		Wilmer	(3,663)		
		Wylie	(351)	15,443	
Dallas SO (District)	**2,284,665**			**15,443**	**0.0698%**
Denton	511,650	Carrollton	51,319		
		Coppell	(600)		
		Dallas	(27,360)		

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Commission on State Emergency Communications
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CSEC STAFF RECOMMENDATION FOR ADOPTION

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
		Fort Worth	(44)		
		Frisco	(14,866)		
		Lewisville	303		
		Plano	(4,108)		
		Southlake	(488)	515,806	
Denco Area 9-1-1 District	**511,650**			**515,806**	**2.3320%**
El Paso	707,385			707,385	
El Paso Cty. 9-1-1 District	**707,385**			**707,385**	**3.1982%**
Ector	123,758			123,758	
Emg. Comm. District of Ector Cty.	**123,758**			**123,758**	**0.5595%**
Galveston	265,459	Friendswood	(31,712)		
		League City	(52,691)	181,056	
Galveston Cty. Emg. Comm. District	**265,459**			**181,056**	**0.8186%**
Harris	3,590,921	Friendswood	31,712		
		Katy	13,060		
		League City	52,691		
		Meadows	5,336		
		Pearland	48,424		
		Stafford	18,337		
		Sugar Land	72,785		
		Waller	2,254		
		Missouri City	61,792	3,897,312	
Greater Harris Cty. 9-1-1 Emg. Network	**3,590,921**			**3,897,312**	**17.6201%**
Henderson	75,959			75,959	
Henderson Cty. 9-1-1 Comm. District	**75,959**			**75,959**	**0.3434%**
Howard	33,641			33,641	
Howard Cty. 9-1-1 Comm. District	**33,641**			**33,641**	**0.1521%**
Kerr	45,336			45,336	
Kerr Cty. Emg. 9-1-1 Network	**45,336**			**45,336**	**0.2050%**
Lubbock	250,218	Abernathy	2,897		
		Plainview	22,084	275,199	
Lubbock Cty. Emg. Comm. District	**250,218**			**275,199**	**1.2442%**

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McLennan	220,123			220,123	
McLennan Cty. Emg. Assistance District	**220,123**			**220,123**	**0.9952%**
Medina	41,479			41,479	
Medina Cty. 9-1-1 District	**41,479**			**41,479**	**0.1875%**
Midland	118,533			118,533	
Midland Emg. Comm. District	**118,533**			**118,533**	**0.5359%**
Montgomery	341,953			341,953	
Montgomery Cty. Emg. Comm. District	**341,953**			**341,953**	**1.5460%**
Wichita	130,810			130,810	
Wilbarger	14,318			14,318	
Wichita-Wilbarger 9-1-1 Comm. District	**145,128**			**145,128**	**0.6561%**
Potter	117,550			117,550	
Randall	109,186			109,186	
Potter-Randall Cty. Emg. Comm. District	**226,736**			**226,736**	**1.0251%**
Tarrant	1,559,086	Azle	1,602		
		Burleson	21,567		
		Fort Worth	44		
		Mansfield	776		
		Grand Prairie	105,650		
		Irving	194,742		
		Southlake	488	1,883,955	
Tarrant Cty. 9-1-1 District	**1,559,086**			**1,883,955**	**8.5175%**
Harrison	62,662			62,662	
Rusk	47,881	Reklaw	351		
		Tatum	1,167	49,399	
Texas Eastern 9-1-1 Network	**110,543**			**112,061**	**0.5066%**
Cedar Hill			38,274		
DeSoto			41,588		
Duncanville			35,576	115,438	
Southwest Regional Communications Center				**115,438**	**0.5219%**
Addison Police Department			14,579	14,579	**0.0659%**

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Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from November 10, 2004 - November 9, 2005

CSEC STAFF RECOMMENDATION FOR ADOPTION

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Aransas Pass Police Department			8,432	8,432	**0.0381%**
City of Dallas Emg. Comm. Office			1,210,606	1,210,606	**5.4733%**
City of Longview PSAP			74,791	74,791	**0.3381%**
Coppell Police Department			38,678	38,678	**0.1749%**
Corpus Christi			278,907	278,907	**1.2610%**
Denison Fire Department			23,205	23,205	**0.1049%**
Ennis Police Department			17,658	17,658	**0.0798%**
Farmers Branch Police Department			27,305	27,305	**0.1234%**
Garland Police Department			219,377	219,377	**0.9918%**
Glenn Heights Police Department			8,223	8,223	**0.0372%**
Highland Park Department of Public Safety			8,566	8,566	**0.0387%**
Hutchins Police Department			2,790	2,790	**0.0126%**
Kilgore Police Department			11,494	11,494	**0.0520%**
Lancaster Fire/Police Department			27,044	27,044	**0.1223%**
Mesquite Police Department			128,480	128,480	**0.5809%**
Portland Police Department			15,392	15,392	**0.0696%**
Plano			247,470	247,470	**1.1188%**
Richardson Police Department			99,311	99,311	**0.4490%**
Rowlett Police and Fire Comm. Center			51,065	51,065	**0.2309%**
Sherman Police Department			36,243	36,243	**0.1639%**
University Park Police Department			22,875	22,875	**0.1034%**
Wylie			21,667	21,667	**0.0980%**
Grand Total	**22,118,509**		-	**22,118,509**	**100.0000%**

Data Source: July 1, 2003 Population Estimates from the Texas State Data Center/Office of the State Demographer in October 2004. Web Site Address: http://txsdc.utsa.edu/tpepp/txpopest.php.

TRD-200500350
Paul Mallett
Executive Director
Commission on State Emergency Communications
Filed: January 26, 2005

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Texas Commission on Environmental Quality

Invitation to Comment for the Draft January 2005 Update to the Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft January 2005 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of the Federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas pollutant discharge elimination system (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities and designated management agency information.

A copy of the draft January 2005 WQMP update may be found on the commission's Web site located at *http://www.tnrcc.state.tx.us/permitting/waterperm/wqmp/index.html*. A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Ms. Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on March 7, 2005. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at *nvignali@TCEQ.state.tx.us*.

TRD-200500337
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 25, 2005

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Notice of Water Quality Applications

The following notices were issued during the period of January 18, 2005 through January 21, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF ARCHER CITY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014549001, to authorize the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 40,000 gallons per day. The facility is located at 614 W. South Street in Archer City approximately 1,800 feet west of the intersection of State Highway 79 and South Street in Archer County, Texas.

THE CITY OF AUSTIN has applied for a renewal of Permit No. 11467-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 345,000 gallons per day via irrigation at the Onion Creek Golf Course. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 4,300 feet east of Interstate Highway 35 and approximately 2 miles north of Farm-to-Market Road 1327 in Travis County, Texas.

BANDERA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 13783-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 12,000 gallons per day via subsurface soil absorption. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located adjacent to Highway 1283 approximately 6.3 miles south of the intersection of State Highway 16 and Highway 1283 at the Town of Pipe Creek in Bandera County, Texas.

CITY OF BIG SPRING has applied for a renewal of TPDES Permit No. 10069-002, which authorizes the discharge of treated filter backwash water at a daily average flow not to exceed 125,000 gallons per day. The facility is located at 16th Street and Virginia Avenue in the City of Big Spring in Howard County, Texas.

FORT HANCOCK WATER CONTROL AND IMPROVEMENT DISTRICT has applied for a renewal of Permit No. 11173-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 33,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on the north side of and adjacent to State Highway 20, approximately one mile southeast of the City of Fort Hancock in Hudspeth County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 278 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0013037002, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,800,000 gallons per day. The facility is located approximately 2,000 feet east of the intersection of Atascocita Road and Wilson Road in Harris County, Texas.

CITY OF JUNCTION has applied for a renewal of TPDES Permit No. 10199-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 280,000 gallons per day. The facility is located north of and adjacent to Farm-to-Market Road 2169, approximately 0.4 mile northeast of the intersection of Farm-to-Market 2169 and Interstate Highway 10 in Kimble County, Texas.

LOWER COLORADO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. 13977-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located approximately 1,000 feet north of State Highway 71 at a point 11,500 feet northwest (along State Highway 71) of the intersection of State Highway 71 and Farm-to-Market Road 1209 in Bastrop County, Texas.

CITY OF PFLUGERVILLE has applied for a renewal of TPDES Permit No. 11845-003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 130 acres on the Blackhawk Golf Course. The facility is located approximately 2,500 feet

east of Farm-to-Market Road 685 and approximately 1,600 feet north of Kelly Lane in Travis County, Texas.

TRAVIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 17 has applied for a major amendment to Permit No. WQ0013294001, to authorize an increase in the daily average flow that can be pre-treated onsite for discharge into a regional wastewater treatment facility from 1,300,000 gallons per day to 1,500,000 gallons per day. The proposed amendment also requests to revise the groundwater monitoring location and authorize onsite composting of sewage sludge and marketing and distribution of the composted sludge. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 525,000 gallons per day via surface irrigation of 145 acres of golf course and subsurface drip irrigation. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located at North Quinlan Park Road, approximately two miles south of the intersection of Ranch Road 620 and Quinlan Park Road in Travis County, Texas. The sludge treatment works will be located adjacent to the wastewater treatment facility.

TRINITY ASSEMBLY CHURCH, INC. Trinity Church has applied for a renewal of Permit No. 14331-001, which authorizes the disposal of treated domestic wastewater at a flow not to exceed a daily average volume of 6,000 gallons per day via drip irrigation of 1.83 acres of nonpublic access landscape. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1,500 feet north and 750 feet east of the intersection of North Loop 1604 East and Judson Road in San Antonio in Bexar County, Texas.

UNIMIN TEXAS COMPANY L.P. which operates a silica sand mining and processing facility, has applied for a major amendment to TPDES Permit No. WQ0003911000 to authorize the use of a surfactant to aid in dewatering sand stockpiles. The current permit authorizes the discharge of process wastewater and storm water on an intermittent and flow variable basis via Outfall 001 and Outfall 002. The facility is located south of State Highway 71 approximately 2000 feet east of the intersection of State Highway 1851 and State Highway 71 near the City of Voca, McCulloch County, Texas.

RICHARD LYNN WAGNER has applied for a renewal of TPDES Permit No. 13575-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located on Lake Conroe's western shore, north of and with access to Farm-to-Market Road 1097, approximately 7.6 miles west of Willis in Montgomery County, Texas.

TRD-200500360

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 26, 2005

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Notice of Water Rights Application

Notices mailed January 24, 2005.

APPLICATION NO. 4431C; M.E. Young and Sons, 500 Young Ranch Lane, Jonesboro, Texas 76538, applicants, seek to amend Water Use Permit 4108 (Application No. 4431) pursuant to Texas Water Code 11.122, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Water Use Permit 4108 (Application No. 4431) authorizes the owners to divert and use not to exceed 900 acre-feet of water per annum from two diversion points on the Brazos River, Brazos River Basin to irrigate 900 acres of land out of 2,053.42 acres in the Jose Maria Sanchez Grant, Abstract No. 65, Falls County, four miles southwest of Marlin, Texas. Water is diverted from two diversion points located on the bank of the Brazos River at a combined maximum diversion rate of 8.9 cfs (4,000 gpm). Diversion point No. 1 is located on the south, or right, bank of the river, S 10.75 E, 3,006 feet from the northeast corner of the said Sanchez Grant. Diversion point No. 2 is located on the north, or right, bank of the river, S 07.25 E, 10,800 feet from the northeast corner of the Sanchez Grant. Ownership of the land to be irrigated is evidenced by a Warranty Deed with Vendor's Lien dated May 15, 2002. The special condition in Amendment No. 4108B indicates that this term permit shall expire and become null and void on December 31, 2004. Applicant seeks to amend Water Use Permit 4108 by extending or deleting the expiration date of December 31, 2004. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and partial fees were received on August 18, 2004, and requested information and fees were received on October 5 and November 19, 2004. The application was declared administratively complete and filed with the Office of the Chief Clerk on December 2, 2004. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5840; The City of Waco, P.O. Box 2570, Waco, Texas 76702-2750, applicant or "the City", seeks Water Use Permit pursuant to Texas Water Code (TWC)11.121, 11.042, and 11.046 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) §§295.1, et seq. Applicant seeks to use the bed and banks of the Brazos River to convey 42,344 acre-feet per year of return flows and any future return flows from the Waco Metropolitan Area Regional Sewage System Wastewater Treatment Plant (WMARSS) located in the Brazos River Basin downstream to a diversion point located on the Brazos River in McLennan County. The WMARSS discharge point is located at Latitude 31.518 N and Longitude 97.063 W. WMARSS is permitted to discharge 37.8 MGD (58.6 cfs) by TPDES Permit No. 11071-001, although currently discharges approximately 28.0 MGD (43.4 cfs) into the Brazos River. Applicant indicates that there will be 0.0320% loss per river mile due to transportation, evaporation, seepage, channel or other associated carriage losses from the point of discharge to the point of diversion, or 0.4% of the total discharge volume. Applicant also indicates that 3,485 acre-feet of the current discharge of 26,959 acre-feet per year of the effluent, or approximately 12.9%, is groundwater-based. Applicant also seeks authorization to divert and use not to exceed 42,175 acre-feet of the total 42,344 acre-feet per year of permitted return flows for agricultural (irrigation), industrial (electric power plant cooling) and municipal purposes within the City's service area. For the purposes of this application, "service area" is defined to mean: the municipal boundaries, extraterritorial jurisdiction and contiguous water certificate of convenience and necessity service areas of Waco and the other Member Cities, as those boundaries currently exist or as they are modified in the future; Member Cities means the Cities of Waco, Bellmead, Hewitt, Lacy-Lakeview, Robinson and Woodway, plus any future cities utilizing WMARSS as its primary source of sewage treatment. The downstream point of diversion on the Brazos River is described as being located at Latitude 31.411 N and Longitude 97.018 W. The distance from the discharge point to the diversion point is approximately 14.35 river miles. Water diverted from the Brazos River will not exceed the maximum diversion rate of 58.6 cfs (26,299.68 gpm). The commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on April 21, 2004, and additional information and fees were received on May 20, 26, and June 29, 2004. The Executive Director reviewed the application, determined it to be administratively complete, and filed it with the Office of the Chief

Clerk on July 13, 2004. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200500359
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 26, 2005

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 7, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 7, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: AHC Western Hatters Limited Liability Company dba American Hat Company; DOCKET NUMBER: 2004-1462-AIR-E; IDENTIFIER: Air Account Number MQ-0283-G, General Operating Permit Number 1761, Regulated Entity Reference Number (RN) 100210244; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: hat manufacturing; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), General Operating Permit Number 1761, and THSC, §382.085(b), by failing to submit an annual compliance certification report; and 30 TAC §101.27(c)(1) and §205.6 and the Code, §5.702, by failing to pay overdue air emission and general permit stormwater fees; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Adelphi Community Cooperative; DOCKET NUMBER: 2003-1275-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 0012227-001, RN101513117; LOCATION: Quinlan, Hunt County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0012227-001, and the Code, §26.121(a), by failing to comply with the permitted limits for five-day biochemical oxygen demand and total suspended solids (TSS); PENALTY: $10,500; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Allied Waste Systems, Inc. dba Trinity Waste Services; DOCKET NUMBER: 2004-1205-MSW-E; IDENTIFIER: Solid Waste Registration (SWR) Number 41774, RN102338464; LOCATION: Hutchins, Dallas County, Texas; TYPE OF FACILITY: municipal solid waste hauling; RULE VIOLATED: 30 TAC §330.4(b), by allegedly transporting waste to a facility not authorized to accept the waste; PENALTY: $200; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Arif Jindani dba Alvin Food Mart; DOCKET NUMBER: 2004-1501-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 54839, RN101909968; LOCATION: Alvin, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Dana Marley dba Antoine Grocery; DOCKET NUMBER: 2004-1924-PST-E; IDENTIFIER: PST Facility Identification Number 65829, RN101489110; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,050;

ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(6) COMPANY: Austin S & S Inc. dba Super Mart; DOCKET NUMBER: 2004-1237-PST-E; IDENTIFIER: PST Facility Identification Number 843; LOCATION: Elgin, Bastrop County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $4,200; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(7) COMPANY: Mr. Robert Wilson dba Brenham South Mobile Home Park; DOCKET NUMBER: 2004-1387-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 2390047, RN101202232; LOCATION: Brenham, Washington County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(b)(4), by failing to maintain the residual disinfectant concentration; 30 TAC §290.42(e)(5), (l), and (m), by failing to properly seal the hypochlorination solution container, by failing to provide a plant operation manual, and by failing to provide each water treatment plant and all appurtenances with an intruder-resistant fence; 30 TAC §290.46(c)(1)(F), (f)(2), (h), (i), (m)(1) and (4), (t), and (v), by failing to have the required sanitary control easement, by failing to provide water system records for review, by failing to have calcium hypochlorite, by failing to provide a plumbing ordinance or service agreement, by failing to initiate a maintenance program, by failing to perform the annual pressure tank inspection, by failing to maintain the pressure tank and related piping in a watertight condition, by failing to post a legible sign at the water plant, and by failing to install all water system electrical wiring in a securely mounted conduit; 30 TAC §290.45(b)(1)(A)(i) and (ii), by failing to provide adequate well production capacity and by failing to provide adequate pressure tank capacity of 50 gallons per connection; 30 TAC §288.30(3), by failing to provide an adopted drought contingency plan; 30 TAC §290.121(a), by failing to maintain an adequate up-to-date chemical and microbiological monitoring plan; and 30 TAC §290.51(a)(3), by failing to pay the public health service fees; PENALTY: $4,323; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: C & R Distributing, Inc.; DOCKET NUMBER: 2004-1469-MLM-E; IDENTIFIER: Air Account Numbers EE1512E, EE1272B, and EE0911Q, RN102598109, RN102479557, RN102477627, and RN102493673; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to observe a valid, current delivery certificate; 30 TAC §115.252(2) and THSC, §382.085(b), by allowing the transfer of gasoline with a Reid vapor pressure greater than seven pounds per square inch absolute; and 30 TAC §114.100(a) and THSC, §382.085(b), by allegedly offering for sale gasoline with an oxygen content lower than 2.7% by weight; PENALTY: $3,032; ENFORCEMENT COORDINATOR: Lori Thompson, (903) 535-5100; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(9) COMPANY: El Paso Field Services, L.P. dba Almeda Refined Products Terminal; DOCKET NUMBER: 2004-1530-AIR-E; IDENTIFIER: Air Account Number HG0157F, RN102940103; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: refined products terminal; RULE VIOLATED: 30 TAC §115.352(1)(A) and §116.115(c), TCEQ New Source Review Permit Number 1234, and THSC, §382.085(b), by failing to repair a leaking valve within 15 days of discovery; PENALTY: $2,150; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Fletcher Fields; DOCKET NUMBER: 2004-1549-LII-E; IDENTIFIER: RN104392022; LOCATION: Brady, McCulloch County, Texas; TYPE OF FACILITY: landscape irrigation system; RULE VIOLATED: 30 TAC §30.5(a) and (b) and §344.4(a), and Texas Occupational Code, §1903.251, by allegedly installing a landscape irrigation system without a TCEQ irrigator license; PENALTY: $200; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(11) COMPANY: General Electric Railcar Repair Services Corporation; DOCKET NUMBER: 2004-1468-IHW-E; IDENTIFIER: Hazardous Waste Permit and Compliance Plan Number 50314, SWR Number 32088, RN102322591; LOCATION: Ranger, Eastland County, Texas; TYPE OF FACILITY: former railcar cleaning and repair; RULE VIOLATED: 30 TAC §305.125(1) and §335.4 and Hazardous Waste Permit Compliance Plan Number 50314, by failing to follow design specifications for monitor well installations, by failing to properly plug soil borings with a cement bentonite grout mixture, by failing to follow the sampling and analysis plan for sampling of monitor wells, by failing to properly prepare water table maps from groundwater data collected, by failing to submit a map of the contaminated area depicting concentrations of vinyl chloride, by failing to submit accurate results of sampling of hazardous constituents, by failing to submit accurate results of well total depth measurements, and by failing to prevent the unauthorized discharge of waste into waters in the state; PENALTY: $18,360; ENFORCEMENT COORDINATOR: Mac Vilas, (512) 239-2557; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(12) COMPANY: Huntsman Petrochemical Corporation; DOCKET NUMBER: 2004-1538-AIR-E; IDENTIFIER: Air Account Number LH0005J, RN100225721; LOCATION: Dayton, Liberty County, Texas; TYPE OF FACILITY: industrial organic chemical manufacturing; RULE VIOLATED: 30 TAC §101.20(1) and §116.115(c), New Source Permit Number 3275A, 40 Code of Federal Regulations (CFR) §60.485-7(h)(2), and THSC, §382.085(b), by failing to comply with Special Condition 2C, which states that the plant shall comply with the applicable requirements in 40 CFR Part 60, Subpart VV, with the designation of difficult-to-monitor valves being less than 3% of the total number of valves; PENALTY: $4,280; ENFORCEMENT COORDINATOR: Kensley Greuter, (512) 239-2520; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Javier Ulloa dba J.E.A. Used Tires; DOCKET NUMBER: 2003-0492-MSW-E; IDENTIFIER: Scrap Tire Transporter Registration Number 25494, RN102803970; LOCATION: Pharr, Hidalgo County, Texas; TYPE OF FACILITY: scrap tire storage and transporter operation; RULE VIOLATED: 30 TAC §328.61(c), (d), (g), and (h), by failing to maintain a minimum of 40 feet separation between tire piles, by failing to prevent outdoor piles consisting of scrap tires or tire pieces from being within 40 feet of the property line or easements, by failing to maintain an adequate fire protection system, and by failing to maintain large capacity dry chemical fire extinguishers; 30 TAC §328.54(d), by failing to identify both sides and the rear of the vehicle used to transport scrap tires with the name and place of business of the transporter; 30 TAC §382.57(e), by failing to submit an annual report of activities; 30 TAC §328.60(a), by failing to obtain a scrap tire storage site registration; 30 TAC §328.61(f), by failing to enclose the entire facility with a chain link type fence; and 30 TAC §328.55(3), by failing to maintain a copy of their scrap tire transporter registration notice at

their designated place of business; PENALTY: $10,440; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(14) COMPANY: J&L Automotive, Inc. dba Midway Shamrock; DOCKET NUMBER: 2004-1682-PST-E; IDENTIFIER: PST Registration Number 0018803, RN101663177; LOCATION: near Waco, Marion County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $950; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(15) COMPANY: William A. Spry dba Knob Hill Pumping; DOCKET NUMBER: 2004-1403-SLG-E; IDENTIFIER: Sludge Transporter Registration Number 20344, RN102546447; LOCATION: Azle, Parker County, Texas; TYPE OF FACILITY: sludge and septage transporting service; RULE VIOLATED: 30 TAC §312.142(c), by failing to maintain the transporters registration in the vehicle; and 30 TAC §312.143, by failing to transport wastes to an authorized facility; PENALTY: $6,400; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Little River Materials Inc.; DOCKET NUMBER: 2004-1075-WQ-E; IDENTIFIER: RN104321872; LOCATION: Minerva, Milam County, Texas; TYPE OF FACILITY: sand and gravel pit; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity; PENALTY: $8,000; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Ehsanallah Lalezari dba Neighborhood Store 2; DOCKET NUMBER: 2004-1547-PST-E; IDENTIFIER: PST Facility Registration Number 62970, RN102254786; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,150; ENFORCEMENT COORDINATOR: Leila Pezeshki, (210) 490-3096; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(18) COMPANY: Dhanani Nooruddin dba Nice N Easy Food Store; DOCKET NUMBER: 2004-1630-PST-E; IDENTIFIER: PST Facility Registration Number 72415, RN101833184; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Erich A. Norton; DOCKET NUMBER: 2004-1459-LII-E; IDENTIFIER: Pending Landscape Irrigation License Number LI0011226, RN103984068; LOCATION: Brady, McCulloch County, Texas; TYPE OF FACILITY: landscape irrigation system; RULE VIOLATED: 30 TAC §30.5(a) and §344.4(a) and the Code, §34.007(a), by failing to obtain an irrigation license prior to repairing an existing system; PENALTY: $200; ENFORCEMENT COORDINATOR: Susan Longenecker, (512) 239-0968; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(20) COMPANY: Presbyterian Children's Homes and Services; DOCKET NUMBER: 2004-1611-MWD-E; IDENTIFIER: TPDES Permit Number 11276001, RN101518124; LOCATION: Itasca, Hill County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11276001, and the Code, §26.121(a), by failing to comply with the effluent limits for TSS; PENALTY: $1,040; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(21) COMPANY: Dung Huynh and Thi Kim dba Quick Food Store 20; DOCKET NUMBER: 2004-1210-PST-E; IDENTIFIER: PST Facility Identification Number 36963, RN101758001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Susan Longenecker, (512) 239-0968; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Rebecca Creek Municipal Utility District; DOCKET NUMBER: 2004-0969-PWS-E; IDENTIFIER: PWS Number 0460164; LOCATION: Spring Branch, Comal County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(5) and THSC, §341.0315(c), by failing to provide water that meets the maximum contamination level (MCL) for total haloacetic acid; PENALTY: $240; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(23) COMPANY: Sampri Investments, LLC dba Sammys 3; DOCKET NUMBER: 2004-1108-PST-E; IDENTIFIER: PST Facility Identification Number 69277; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,460; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Sempipe, L.P.; DOCKET NUMBER: 2004-1488-AIR-E; IDENTIFIER: Air Account Numbers WO0036B and AA0055P, RN100216589 and RN100223957; LOCATION: Hawkins, Neches; Wood, Anderson Counties, Texas; TYPE OF FACILITY: crude petroleum pipeline systems; RULE VIOLATED: 30 TAC §122.145(2) and §122.146(1) and THSC, §382.085(b), by failing to timely submit permit compliance certifications and associated deviation reports; and 30 TAC §122.121 and §122.505(e) and THSC, §382.054, by failing to obtain authorization to operate emission units; PENALTY: $22,400; ENFORCEMENT COORDINATOR: Jill Reed, (915) 570-1359; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(25) COMPANY: Shbaita, Inc. dba Super Stop 4; DOCKET NUMBER: 2004-1782-PST-E; IDENTIFIER: PST Facility Identification Number 30065, RN101882769; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,200; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Shell Chemical LP; DOCKET NUMBER: 2004-0867-IHW-E; IDENTIFIER: SWR Number 30007, RN100211879; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: petroleum refining and chemical manufacturing; RULE VIOLATED: 30 TAC §335.224(11) and (14) and 40 CFR §266.103(c), by failing to conduct compliance testing and submit recertification of compliance and by failing to cease the burning of

waste; PENALTY: $13,800; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Texarkana Water Utilities dba Texarkana Wastewater Treatment Facility; DOCKET NUMBER: 2004-1434-PST-E; IDENTIFIER: PST Facility Registration Number 46473, RN102458296; LOCATION: Texarkana, Bowie County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(28) COMPANY: Gerard Van Kooten dba Van Kooten Dairy Farm; DOCKET NUMBER: 2004-0999-AGR-E; IDENTIFIER: Water Quality Permit Number 0004067000; LOCATION: Comanche, Comanche County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.39(f)(11), (18), and (28)(G), by failing to maintain the waste storage ponds, by failing to prevent trees from growing within the potential distance of the root zone, and by failing to develop a detailed nutrient utilization plan; 30 TAC §321.41(a)(2), by failing to document regular employee training; and 30 TAC §321.42(j), by failing to submit soil sample results; PENALTY: $4,815; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(29) COMPANY: R. D. Wallace Oil Company, Inc. dba Wallace Oil Company; DOCKET NUMBER: 2004-1767-PST-E; IDENTIFIER: PST Facility Identification Number 64900, RN101854594; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: wholesale gasoline sales; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $720; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

TRD-200500340
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 25, 2005

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Office of the Governor

Notice of Extension of Closing Date for Receipt of Applications for the Safe and Drug-Free Schools and Communities (SDFSC) Act Program

The Office of the Governor, Criminal Justice Division (CJD), published a request for applications for the Safe and Drug-Free Schools and Communities (SDFSC) Act Program in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11785). This notice is published to extend the closing date for receipt of applications.

The published paragraph regarding the closing date for receipt of applications is replaced with the following paragraph, which contains the new closing date for receipt of applications:

Closing Date for Receipt of Applications: Submit all applications electronically to the Office of the Governor, Criminal Justice Division via email at cjdapps@governor.state.tx.us on or before March 15, 2005.

TRD-200500367
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: January 26, 2005

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Notice of Extension of Closing Date for Receipt of Applications for the State Criminal Justice Planning (421) Fund

The Office of the Governor, Criminal Justice Division (CJD), published a request for applications for the State Criminal Justice Planning (421) Fund in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11787). This notice is published to extend the closing date for receipt of applications.

The published paragraph regarding the closing date for receipt of applications is replaced with the following paragraph, which contains the new closing date for receipt of applications:

Closing Date for Receipt of Applications: Submit all applications electronically to the Office of the Governor, Criminal Justice Division via email at cjdapps@governor.state.tx.us on or before March 15, 2005.

TRD-200500369
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: January 26, 2005

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Request for Grant Applications (RFA) for the Juvenile Accountability Block Grant (JABG) Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting statewide discretionary applications for projects that promote greater accountability in the juvenile justice system during the fiscal year 2006 grant cycle.

Purpose: The purpose of the JABG Program is to develop programs that promote greater accountability in the juvenile justice system.

Available Funding: Federal funding is authorized under the Omnibus Crime Control and Safe Streets Act of 2002, Public Law 107-273, 42 U.S.C. 3796ee et seq., as amended. All grants awarded from this fund must comply with the requirements contained therein.

Funding Levels: No minimum or maximum funding levels.

Required Match: Grantees, other than Native American Tribes, must provide matching funds of at least ten percent (10%) of total project expenditures. Native American Tribes must provide a five percent (5%) match. This requirement may be met through cash contributions.

Standards: Grantees will comply with the standards applicable to this funding source cited in Texas Administrative Code, Title 1, Part 1, Chapter 3, and the statutes, regulations, and guidelines applicable to this funding. In addition, grantees will comply with the federal regulations at 28 C.F.R. §95.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

(1) admission fees or tickets to any amusement park, recreational activity or sporting event;

(2) construction;

(3) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;

(4) fundraising;

(5) legal services for adult offenders;

(6) lobbying;

(7) medical services;

(8) membership dues for individuals;

(9) overtime pay;

(10) promotional gifts;

(11) proselytizing or sectarian worship;

(12) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;

(13) vehicles or equipment for government agencies that are for general agency use;

(14) weapons, ammunition, explosives or military vehicles;

(15) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (e.g., supplanting); and

(16) any portion of the salary of, or any other compensation for an elected or appointed government official, except in the case of a juvenile court or drug court.

Eligible Applicants:

(1) State agencies;

(2) Units of local government including crime control and prevention districts;

(3) Nonprofit corporations; and

(4) Native American Tribal Governments.

Requirements:

(1) Applicants will address one or more of the following JABG Purpose Areas:

(a) Purpose Area 8: Establishing drug court programs for juvenile offenders that provide continuing judicial supervision over juvenile offenders with substance abuse problems and the integrated administration of other sanctions and services for such offenders.

(b) Purpose Area 10: Establishing and maintaining interagency information-sharing programs that enable the juvenile, and criminal justice systems, schools, and social services agencies to make more informed decisions regarding the early identification, control, supervision, and treatment of juveniles who repeatedly commit serious delinquent or criminal acts.

(c) Purpose Area 13: Establishing and maintaining accountability-based programs that are designed to enhance school safety.

(2) In addition, all juvenile justice projects will address one or more of the following priorities developed in coordination with the Governor's Juvenile Justice Advisory Board:

(a) Family Stability--Programs or other initiatives designed to strengthen family support systems in an effort to positively impact the lives of youth and divert them from a path of serious, violent, or chronic delinquency.

(b) Substance Abuse Early Intervention and Prevention--Programs, or other initiatives designed to address the use and abuse of illegal and other prescription and nonprescription drugs and the use and abuse of alcohol including control, prevention, and treatment.

(c) Education--Programs or other initiatives designed to prevent truancy, suspension, and expulsion. School safety programs may include support for school resource officers and law-related education.

(d) Disproportionate Minority Contact (DMC)--Programs or other initiatives designed to address the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

(e) Justice System Impact--Programs or other initiatives designed to impact offender accountability and/or improve the practices, policies, or procedures within the juvenile justice system.

(f) Gang Prevention--Programs or other initiatives designed to address issues related to juvenile gang activity, including prevention and intervention efforts directed at reducing gang-related activities.

(g) Rural Access--Programs or other initiatives designed to provide prevention, intervention, and treatment services located outside a metropolitan area.

(h) Training--Programs or other initiatives designed to offer specialized training for staff working directly with at-risk youth or juvenile offenders that can positively impact the quality of the services, staff turnover rates, and program stability.

Project Period: Grand-funded projects will begin on or after August 1, 2005, and will expire on or before July 31, 2006.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's web site at http://www.governor.state.tx.us/divisions/cjd/formsapps/view.

Preferences: Preference will be given to those applicants that demonstrate cost effective programs focused on proven or promising approaches to the provision of services.

Closing Date for Receipt of Applications: Submit all applications electronically to the Office of the Governor, Criminal Justice Division via email at cjdapps@governor.state.tx.us on or before April 1, 2005.

Selection Process: For state discretionary projects, applications are reviewed by CJD staff members or a review group selected by the Executive Director. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact Sanzanna Lolis at slolis@governor.state.tx.us or (512) 463-1919.

TRD-200500356
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: January 26, 2005

♦ ♦ ♦

Request for Grant Applications (RFA) for the Juvenile Justice and Delinquency Prevention (JJDP) Act Fund Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications under the Juvenile Justice and Delinquency Prevention Act fund during the state fiscal year 2006 grant cycle.

Purpose: The purpose of the JJDP Act Fund Program is to improve the juvenile justice system and develop effective education, training,

research, prevention, diversion, treatment, and rehabilitation programs in the area of juvenile delinquency.

Available Funding: Federal funding is authorized under the Juvenile Justice and Delinquency Prevention Act of 2002, Public Law 107-273, 42 U.S.C. 5601 et seq., as amended. All grants awarded from this fund source must comply with the requirements contained therein.

Funding Levels: No minimum or maximum funding levels.

Required Match: No match required.

Standards: Grantees will comply with the standards applicable to this funding source cited in Texas Administrative Code, Title 1, Part 1, Chapter 3, and the statutes, regulations, and guidelines applicable to this funding. In addition, grantees will comply with the federal regulations at 28 C.F.R. §31.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

(1) admission fees or tickets to any amusement park, recreational activity or sporting event;

(2) construction;

(3) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;

(4) fundraising;

(5) legal services for adult offenders;

(6) lobbying;

(7) medical services;

(8) membership dues for individuals;

(9) overtime pay;

(10) promotional gifts;

(11) proselytizing or sectarian worship;

(12) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;

(13) vehicles or equipment for government agencies that are for general agency use;

(14) weapons, ammunition, explosives or military vehicles;

(15) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (e.g., supplanting); and

(16) any portion of the salary of, or any other compensation for an elected or appointed government official, except in the case of a juvenile court or drug court.

Eligible Applicants:

(1) State agencies;

(2) Units of local government;

(3) Nonprofit corporations;

(4) Indian tribes performing law enforcement functions;

(5) Crime control and prevention districts;

(6) Universities;

(7) Colleges;

(8) Independent school districts; and

(9) Faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Requirements:

(1) Applicants must address one or more of the following program areas:

(a) Aftercare/Reentry;

(b) Alternatives to Detention;

(c) Child Abuse and Neglect Programs;

(d) Children of Incarcerated Parents;

(e) Community Assessment Centers (CACs);

(f) Court Services;

(g) Delinquency Prevention;

(h) Disproportionate Minority Contact;

(i) Diversion;

(j) Gangs;

(k) Gender-Specific Services;

(l) Graduated Sanctions;

(m) Gun Programs

(n) Hate Crimes;

(o) Job Training;

(p) Justice System Improvement;

(q) Mental Health Services;

(r) Mentoring;

(s) American Indian Programs;

(t) Probation;

(u) Restitution/Community Service;

(v) Rural Area Juvenile Programs;

(w) School Programs;

(x) Serious Crime;

(y) Sex Offender Programs;

(z) Substance Abuse;

(aa) Youth Advocacy; or

(bb) Youth Courts;

(2) In addition, all juvenile justice projects will address one or more of the following priorities developed in coordination with the Governor's Juvenile Justice Advisory Board:

(a) Family Stability--Programs or other initiatives designed to strengthen family support systems in an effort to positively impact the lives of youth and divert them from a path of serious, violent, or chronic delinquency.

(b) Substance Abuse Early Intervention and Prevention--Programs or other initiatives designed to address the use and abuse of illegal and other prescription and nonprescription drugs and the use and abuse of alcohol. Programs or other initiatives include control, prevention, and treatment.

(c) Education--Programs or other initiatives designed to prevent truancy, suspension, and expulsion. School safety programs may include support for school resource officers and law-related education.

(d) Disproportionate Minority Contact (DMC)--Programs or other initiatives designed to address the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

(e) Justice System Impact--Programs or other initiatives designed to impact offender accountability and/or improve the practices, policies, or procedures within the juvenile justice system.

(f) Gang Prevention--Programs or other initiatives designed to address issues related to juvenile gang activity, including prevention and intervention efforts directed at reducing gang-related activities.

(g) Rural Access--Programs or other initiatives designed to provide prevention, intervention, and treatment services located outside a metropolitan area.

(h) Training--Programs or other initiatives designed to offer specialized training for staff working directly with at-risk youth or juvenile offenders that can positively impact the quality of the services, staff turnover rates, and program stability.

Project Period: Grant-funded projects will begin on or after September 1, 2005, and will expire on or before August 31, 2006.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's web site at http://www.governor.state.tx.us/divisions/cjd/formsapps/view.

Preferences: Preference will be given to those applicants that demonstrate cost effective programs focused on proven or promising approaches to service provision.

Closing Date for Receipt of Applications: Submit all applications electronically to the Office of the Governor, Criminal Justice Division via email at cjdapps@governor.state.tx.us on or before April 1, 2005.

Selection Process:

(1) For eligible local and regional projects:

(a) Applications are forwarded by CJD to the appropriate regional council of governments (COG).

(b) The COG's criminal justice advisory committee prioritizes all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.

(c) CJD accepts priority listings that are approved by the COG's executive committee.

(d) CJD will make all final funding decisions based upon approved COG priorities, reasonableness of the project, availability of funding, and cost-effectiveness.

(2) For state discretionary projects, applications are reviewed by CJD staff members or a review group selected by the Executive Director. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact Sanzanna Lolis at slolis@governor.state.tx.us or (512) 463-1919.

TRD-200500354
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: January 26, 2005

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Request for Grant Applications (RFA) for the Title V - Juvenile Justice and Delinquency Prevention (JJDP) Act Fund Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for local projects to implement comprehensive plans developed by communities during the fiscal year 2006 grant cycle.

Purpose: The purpose of the Title V - Juvenile Justice and Delinquency Prevention Act Fund is to reduce delinquency and youth violence by supporting communities in providing their children, families, neighborhoods, and institutions with the knowledge, skills, and opportunities necessary to foster a healthy and nurturing environment which supports the growth and development of productive and responsible citizens.

Available Funding: Federal funding is authorized under the Juvenile Justice and Delinquency Act of 2002, Title V, Public Law 107-273, codified as amended at 42 U.S.C. 5781 et seq. All grants awarded from this fund must comply with the requirements contained therein.

Funding Levels:

(1) Grantees are allowed a maximum of three years of funding (this includes any years previously funded for the same project).

(2) Minimum grant award--$25,000.

(3) Maximum grant award--$250,000.

Required Match: Grantees must provide matching funds of at least thirty-four percent (34%) of total project expenditures. This requirement may be met through cash and/or in-kind contributions.

Standards: Grantees will comply with the standards applicable to this funding source cited in Texas Administrative Code, Title 1, Part 1, Chapter 3, and the requirements of the federal statutes, regulations and guidelines applicable to this funding. In addition, grantees will comply with the federal regulations at 28 C.F.R. §31.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

(1) admission fees or tickets to any amusement park, recreational activity or sporting event;

(2) construction;

(3) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;

(4) fundraising;

(5) legal services for adult offenders;

(6) lobbying;

(7) medical services;

(8) membership dues for individuals;

(9) overtime pay;

(10) promotional gifts;

(11) proselytizing or sectarian worship;

(12) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;

(13) vehicles or equipment for government agencies that are for general agency use;

(14) weapons, ammunition, explosives or military vehicles;

(15) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (e.g., supplanting); and

(16) any portion of the salary of, or any other compensation for an elected or appointed government official, except in the case of a juvenile court or drug court.

Eligible Applicants:

(1) Units of local government; and

(2) Native American Tribal Governments performing law enforcement functions.

Requirements:

(1) Each community applying for funds will have a local prevention policy board that will direct the project and develop a three-year delinquency prevention plan. The prevention plan will be based on an assessment of risk factors associated with the development of delinquent behavior in the community's children. This plan will address one or more of the following activities:

(a) Alcohol and substance abuse prevention services;

(b) Tutoring and remedial education;

(c) Child and adolescent health and mental health services;

(d) Recreation services;

(e) Leadership and youth development activities;

(f) Teaching accountability;

(g) Assistance in the development of job training skills; and

(h) Other data-driven evidence based prevention programs.

(2) In addition, all juvenile justice projects will address one or more of the following priorities developed in coordination with the Governor's Juvenile Justice Advisory Board:

(a) Family Stability--Programs or other initiatives designed to strengthen family support systems in an effort to positively impact the lives of youth and divert them from a path of serious, violent, or chronic delinquency.

(b) Substance Abuse Early Intervention and Prevention--Programs or other initiatives designed to address the use and abuse of illegal and other prescription and nonprescription drugs and the use and abuse of alcohol. Programs or other initiatives include control, prevention, and treatment.

(c) Education--Programs or other initiatives designed to prevent truancy, suspension, and expulsion. School safety programs may include support for school resource officers and law-related education.

(d) Disproportionate Minority Contact (DMC)--Programs or other initiatives designed to address the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

(e) Justice System Impact--Programs or other initiatives designed to impact offender accountability and/or improve the practices, policies, or procedures within the juvenile justice system.

(f) Gang Prevention--Programs or other initiatives designed to address issues related to juvenile gang activity, including prevention and intervention efforts directed at reducing gang-related activities.

(g) Rural Access--Programs or other initiatives designed to provide prevention, intervention, and treatment services located outside a metropolitan area.

(h) Training--Programs or other initiatives designed to offer specialized training for staff working directly with at-risk youth or juvenile offenders that can positively impact the quality of the services, staff turnover rates, and program stability.

Project Period: Grand-funded projects will begin on or after September 1, 2005, and will expire on or before August 31, 2006.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's web site at http://www.governor.state.tx.us/divisions/cjd/formsapps/view.

Preferences: Preference will be given to those applicants who conduct comprehensive community planning and demonstrate the use cost effective programs focused on proven or promising approaches to delinquency prevention.

Closing Date for Receipt of Applications: Submit all applications electronically to the Office of the Governor, Criminal Justice Division, via email at cjdapps@governor.state.tx.us on or before April 1, 2005.

Selection Process:

For eligible local and regional projects:

(a) Applications are forwarded by CJD to the appropriate regional council of governments (COG).

(b) The COG's criminal justice advisory committee prioritizes all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.

(c) CJD accepts priority listings that are approved by the COG's executive committee.

(d) CJD will make all final funding decisions based upon approved COG priorities, reasonableness of the project, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact Sanzanna Lolis at slolis@governor.state.tx.us or (512) 463-1919.

TRD-200500355
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: January 26, 2005

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Texas Health and Human Services Commission

Request for Proposals

The Health and Human Services Commission (HHSC) announces the issuance of Request for Proposals (RFP) #529-5-003, "Managed Care Organizations (MCO) Management Information System (MIS)/Operations Readiness and Assessment Reviews." HHSC seeks professional consultants and invites potential vendors to submit proposals to perform readiness reviews on Health Maintenance Organizations (HMOs) and/or Exclusive Provider Organizations (EPOs) that will contract with HHSC under the Joint Medicaid/Children's Health Insurance Program (CHIP) HMO RFP, #529-04-072. HHSC issued RFP #529-05-003 on November 5, 2004. HHSC has revised and renumbered RFP #529-05-003 as #529-5-003 and has re-classified the services sought as consulting services. HHSC also has deleted the requirement found in the original RFP that potential vendors submit a letter of intent in order to be eligible to submit a proposal. Notice of RFP #529-5-003 is being published in the Texas Register in accordance with the requirements of Chapter 2254, Subchapter B, Texas Government Code.

The consultant will be responsible for providing HHSC with an independent assessment of whether each HMO/EPO has: (1) MIS and claims processing systems that are able to support the HMO/EPO system and performance requirements related to the flow and use of data; (2) MIS and claims processing systems that comply with applicable state and federal laws, including the Health Insurance Portability and Accountability Act (HIPAA); and (3) the ability to meet the operational requirements outlined in the HMO or EPO contract.

A portion of the services described in this RFP comprise automated information services, including but not limited to information technology consulting. Before the effective date of any contract awarded under this RFP, the awarded vendor must be a Catalog Information Systems Vendor (CISV) as required by the Texas Building and Procurement Commission. Vendors who are not currently approved CISVs may download the Centralized Master Bidders List (CMBL) and CISV requirements at the following address: http://www.tbpc.state.tx.us/stpurch/cisv.html.

All proposals will be subject to evaluation based on the evaluation criteria and procedures set forth in the RFP. The consultant will be selected on the basis of demonstrated competence, knowledge and qualifications, considering the reasonableness of the proposed fee for services. In accordance with the requirements of Chapter 2254, Subchapter B, Texas Government Code, preference will be given to a consultant whose principal place of business is within the state of Texas or who will manage the project entirely from its office in Texas, all other considerations being equal. The award of a contract is contingent upon approval by the Office of the Governor of HHSC's request for a major consulting contract.

Interested parties may obtain a copy of the revised RFP by downloading a copy from the HHSC website at: http://www.hhsc.state.tx.us, under the "Business Opportunities" link and then under the "Contracting Opportunities" link. The revised RFP will be posted on the HHSC website and the Texas Marketplace website on February 4, 2005.

The HHSC Project Manager and sole point of contact for the procurement is:

Alice Newmann Hanna, Project Manager

Phone: (512) 491-1315

E-mail: alice.newmann@hhsc.state.tx.us

Mailing Address:

Procurement - H350

Texas Health and Human Services Commission

P.O. Box 85200

Austin, Texas 78708-5200

ATTN: Alice Hanna, Project Manager

Physical Address for overnight, commercial and hand deliveries:

Texas Health and Human Services Commission

c/o Alice Hanna, Project Manager

11209 Metric Blvd.

Building H, Suite A

Austin, Texas 78758

To be considered, all proposals must be received on or before 4:00 p.m., Central Time, on February 28, 2005. Proposals received after this time will not be considered.

The selected vendor will be expected to begin performance of the contract on or about April 15, 2005.

The anticipated schedule of events is as follows:

Issuance of Revised RFP - February 4, 2005;

Deadline for submitting proposals - February 28, 2005;

Contract execution - on or before March 30, 2005.

All questions concerning the RFP should be addressed to Alice Hanna at the address and telephone number stated above.

HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice or the RFP. HHSC will not pay for any costs incurred by any entity in responding to this RFP.

TRD-200500366
Carey E. Smith
General Counsel
Texas Health and Human Services Commission
Filed: January 26, 2005

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Columbia/ST Davids Healthcare System LP DBA St Davids Medical Center	L05856	Austin	00	01/11/05
Livingston	Heart and Vascular Diagnostic Clinic	L05850	Livingston	00	01/11/05
Throughout TX	Year Inc DBA PSI-Paltec	L05851	Graham	00	01/13/05
Trophy Club	Trophy Club Medical Center LP DBA Trophy Club Medical Center	L05827	Trophy Club	00	01/11/05

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Arlington	Imaging & Medical Diagnostic Specialists PA DBA Central Imaging of Arlington	L04876	Arlington	05	01/04/05
Austin	Seton Medical Center	L02896	Austin	80	01/03/05
Beaumont	Lifeshare Blood Centers	L04884	Beaumont	10	01/11/05
Big Spring	Big Spring Hospital Corporation DBA Scenic Mountain Medical Center	L00763	Big Spring	45	01/11/05
Carthage	East Texas Medical Center Carthage	L02540	Carthage	32	01/10/05
Corpus Christi	Coastal Cardiology Association	L04754	Corpus Christi	21	01/12/05
Dallas	Medical City Dallas Hospital DBA Medical City	L01976	Dallas	153	01/10/05
El Paso	Cardiology Care Consultants	L05045	El Paso	04	01/11/05
Fort Worth	Cook Childrens Medical Center	L04518	Fort Worth	13	01/11/05
Fort Worth	Physician Reliance LP DBA Texas Oncology at Klabzuba	L05545	Fort Worth	09	01/05/05
Fort Worth	Radiology Associates	L03953	Fort Worth	35	12/28/04
Houston	ConocoPhillips Company	L01634	Houston	45	01/03/05
Houston	Northwest Cardiology Consultants PA	L05795	Houston	01	12/31/04
Houston	Nuclear Imaging Services LLC	L05775	Houston	04	01/03/05
Houston	Rice Nuclear Diagnostics	L05830	Houston	02	01/06/05
Houston	University of Texas MD Anderson Cancer Center	L00466	Houston	95	01/06/05
Houston	University of Houston	L01886	Houston	49	01/11/05
Killeen	George S Rebecca MD FACC DBA Texas Cardiovascular Medicine	L05099	Killeen	05	01/04/05
Lewisville	Texas Oncology PA DBA Lake Vista Cancer Center	L05526	Lewisville	07	01/11/05
Lubbock	University Medical Center	L04719	Lubbock	74	01/04/05
Midland	West Texas Medical Center DBA The Heart Center	L04729	Midland	12	01/06/05
Odessa	Texas Oncology PA DBA West Texas Cancer Center	L05140	Odessa	05	01/07/05
Pampa	Titan Specialties LTD	L04920	Pampa	07	01/05/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Pasadena	Vista Community Medical CTR LLC DBA Vista Medical CTR Hospital	L05503	Pasadena	04	01/11/05
San Angelo	Shannon Medical Center	L02174	San Angelo	54	01/05/05
San Antonio	ACA SA LTD DBA Sendero Imaging and Treatment Center	L05567	San Antonio	06	12/31/04
San Antonio	Medi-Physics Inc DBA GE Healthcare	L04764	San Antonio	26	01/06/05
San Antonio	The University of Texas Health Science Center at San Antonio	L05217	San Antonio	05	01/05/05
San Antonio	William Craig MD PA	L05378	San Antonio	05	12/31/04
Temple	Kings Daughters Hospital	L00666	Temple	45	01/04/05
Throughout TX	Rodriguez Engineering	L04700	Austin	11	01/06/05
Throughout TX	Littleton Inspection Services	L04835	Desoto	05	01/13/05
Throughout TX	Golder Associates Inc	L04645	Houston	06	01/11/05
Throughout TX	Oceaneering International Inc	L04463	Houston	38	01/05/05
Throughout TX	Atser Corporation	L04741	Houston	20	01/07/05
Throughout TX	Irisndt Inc	L04769	Houston	15	01/03/05
Throughout TX	Perf-O-Log Inc	L05478	Iowa Colony	10	01/03/05
Throughout TX	Non Destructive Inspection Corporation	L02712	Lake Jackson	118	01/05/05
Throughout TX	Sonic Surveys Inc	L02622	Mont Belvieu	19	01/11/05
Throughout TX	Texas Gamma Ray LLC	L05561	Pasadena	44	01/06/05
Throughout TX	Fugro Consultants LP	L04322	Pasadena	74	01/03/05
Throughout TX	Quantum Technical Services Inc	L03731	Pasadena	21	01/11/05
Throughout TX	Conam Inspection & Engineering Inc	L05010	Pasadena	82	01/03/05
Throughout TX	Globe Engineers Inc	L05527	Plano	01	01/11/05
Throughout TX	Ludlum Measurements Inc	L01963	Sweetwater	66	01/10/05
Throughout TX	Apex Geoscience Inc	L04929	Tyler	15	01/03/05
Tomball	Tomball Hospital Authority DBA Tomball Regional Hospital	L02514	Tomball	34	01/07/05
Tyler	Trinity Mother Frances Health System	L01670	Tyler	114	01/05/05
Tyler	Trinity Mother Frances Health System	L01670	Tyler	115	01/10/05

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Channelview	Phoenix Tubular Resources Inc	L05122	Channelview	01	01/05/05
El Paso	Western Refining Company LP	L02669	El Paso	14	01/10/05
Houston	CHCA West Houston LP DBA West Houston Medical Center	L02224	Houston	65	01/10/05
Houston	University of Texas Health Science Center at Houston	L03685	Houston	31	01/10/05
Temple	Scott & White Memorial Hospital & Scott Sherwood & Brindley Foundation DBA Scott & White Memorial Hospital	L00331	Temple	71	01/04/05
Throughout TX	Quality Consultants	L05028	Tyler	03	01/06/05

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Pearland	Guidant Corporation VI	L05178	Pearland	17	01/04/05
The Woodlands	Houston Advanced Research Center	L04707	The Woodlands	04	01/12/05

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Longview	Longview Asphalt Inc	L04827	Longview		01/10/05

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has compiled with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has compiled with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200500295
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: January 24, 2005

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Texas Department of Housing and Community Affairs

Multifamily Housing Revenue Bonds (Grove Village and Pleasant Village Apartments) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Frederick Douglass Elementary School, 226 N. Jim Miller Road, Dallas, Texas 75217, at 6:00 p.m. on February 22, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $13,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Grove Village Limited Partnership, a limited partnership, and Pleasant Village Limited Partnership, a limited partnership, or a related persons or affiliates thereof (the "Borrowers") to finance a portion of the costs of acquiring, constructing and equipping two multifamily housing developments (the "Developments") described as follows: Grove Village Apartments will be a 232-unit multifamily residential rental development to be located at approximately 7209 South Loop 12, Dallas County, Texas and Pleasant Village Apartments will be a 200-unit multifamily residential rental development to be located at 378 N. Jim Miller Road, Dallas County, Texas. The Developments initially will be owned by the Borrowers.

All interested parties are invited to attend such public hearing to express their views with respect to the Developments and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200500344
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 25, 2005

♦ ♦ ♦

Multifamily Housing Revenue Bonds (Waxahachie Senior Apartments) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Wedgeworth Elementary School, 405 Solon Road, Waxahachie, Texas 75165, at 7:00 p.m. on February 24, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in

an aggregate principal amount not to exceed $10,100,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Senior Apartments of Waxahachie, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 180-unit senior multifamily residential rental development to be located on the south side of the Highway 287 Bypass approximately 3/4 of a mile west of the intersection of Ovilla Road and the Highway 287 Bypass, Ellis County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200500345
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 25, 2005

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Houston-Galveston Area Council

Request for Proposal

(TRN-05-4330-01)

The Houston-Galveston Area Council (H-GAC) is requesting written proposals to provide congestion mitigation analysis and transportation control measures data collection. The primary objective of this project is to gather traffic and transportation system data to enable the H-GAC to determine whether adding single-occupant vehicle capacity to an existing roadway facility or corridor is justified.

A pre-proposal meeting is scheduled at **2 p.m. on Wednesday, February 9, 2005**, at H-GAC offices. Submittals are due by **2 p.m. on Wednesday, February 23, 2005**. Late submittals will **NOT** be accepted. Six (6) typewritten, bound/stapled and signed copies are required.

The Request for Proposals packet can be downloaded from the H-GAC Transportation Department Web site at **www.h-gac.com/transportation**. Interested firms may also obtain the packet at the H-GAC offices at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, or by contacting ILyas Choudry at 713-993-4564, or Jerry Bobo at 713-993-4571. All questions regarding the Request for Proposals must be made in writing, and can be sent to the attention of ILyas Choudry by email to ilyas.choudry@h-gac.com, faxed to 713-993-4508, or mailed to the Houston-Galveston Area Council, P.O. Box 22777, Houston, TX 77227-2777. While questions regarding this request for proposals are welcome anytime, no scope of services questions will be answered before the pre-proposal meeting.

TRD-200500352
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: January 26, 2005

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Texas Department of Insurance

Company Licensing

Application to change the name of INDUSTRIAL-ALLIANCE PACIFIC LIFE INSURANCE COMPANY to INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC. OF CANADA, a foreign life, accident and/or health company. The home office is in Vancouver, Canada.

Application for admission to the State of Texas by PHYSICIANS INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Pompano Beach, Florida.

Application for admission to the State of Texas by STANFORD LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Phoenix, Arizona.

Application for admission to the State of Texas by UNIVERSAL INSURANCE COMPANY OF TEXAS, a foreign fire and/or casualty company. The home office is in Sarasota, Florida.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas, 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200500364
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: January 26, 2005

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Texas Department of Licensing and Regulation

Correction of Error

The Texas Department of Licensing and Regulation adopted amendments to 16 TAC §§68.1, 68.10, 68.20, 68.30, 68.31, 68.50 - 68.54, 68.65, 68.70, 68.74 - 68.76, 68.79, 68.80, 68.90, 68.93, 68.100, and 68.101 and new §68.102 and §68.103 in the January 28, 2005, issue of the *Texas Register* (30 TexReg 382).

The preamble to the rule adoption states:

". . . §68.102(b)(2)(C) has been changed to specify that the maximum distance from the curb line to the detectable warning's edge nearest the curb line is 10" rather than 8"." Due to an error in the agency's document submission, the text of §68.102 published on page 388, column 2 does not include this change. In addition, the phrase "as a minimum 24" in depth" should be "at a minimum of 24" in depth."

The text of §68.102(b)(2)(C) should read as follows:

(C) At diagonal curb ramps constructed within the public right-of-way, detectable warnings complying with TAS 4.29 at a minimum of 24"

in depth (in the direction of pedestrian travel) and extending the full width of the curb ramp or landing, or textures complying with TAS 4.7.4, shall be provided. Additionally, the department will allow the detectable warning to be curved with the radius of the corner. The detectable warning shall be located so that the edge nearest the curb line is 6" minimum and 10" maximum from the curb line.

TRD-200500357

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Texas Lottery Commission

Instant Game Number 529 "Wheel of Fortune"

This game procedure is being amended to reflect changes in the programming parameters and validation requirements. This amended game procedure supersedes the game procedure that was published in the January 14, 2005, issue of the *Texas Register* (30 TexReg 145).

1.0 Name and Style of Game.

A. The name of Instant Game No. 529 is "WHEEL OF FORTUNE". The play style is "key symbol match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 529 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 529.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: B, C, D, F, G, H, J, K, L, M, N, P, Q, R, S, T, V, W, X, Y, Z, WHEEL SYMBOL, $1.00, $2.00, $3.00, $5.00, $8.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $200, $1,000, $2,500 and $25,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 529 - 1.2D

PLAY SYMBOL	CAPTION
B	BB
C	CC
D	DD
F	FF
G	GG
H	HH
J	JJ
K	KK
L	LL
M	MM
N	NN
P	PP
Q	QQ
R	RR
S	SS
T	TT
V	VV
W	WW
X	XX
Y	YY
Z	ZZ
WHEEL SYMBOL	WIN
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$8.00	EIGHT$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$1,000	ONE THOU
$2,500	25 HUND
$25,000	25 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 529 - 1.2E

CODE	PRIZE
TWO	$2.00
THR	$3.00
FIV	$5.00
EGT	$8.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $3.00, $5.00, $8.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or $200.

I. High-Tier Prize - A prize of $1,000, $2,500 or $25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (529), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 529-0000001-001.

L. Pack - A pack of "WHEEL OF FORTUNE" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 002 and 003 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in a A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WHEEL OF FORTUNE" Instant Game No. 529 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "WHEEL OF FORTUNE" Instant Game is determined once the latex on the ticket is scratched off to expose 23 (twenty-three) Play Symbols. If a player matches any of YOUR LETTERS play symbols to any of the WHEEL LETTERS play symbols the player wins prize for that letter. If a player reveals a wheel symbol the player wins $20 instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 23 (twenty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 23 (twenty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 23 (twenty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 23 (twenty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical "spot for spot" play data.

B. No duplicate non-winning Your Letters play symbols on a ticket.

C. No duplicate Wheel Letters play symbols on a ticket.

D. No three (3) or more like non-winning prize symbols on a ticket.

E. The wheel symbol will never appear more than once on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. The wheel symbol will always appear with the $20 prize symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "WHEEL OF FORTUNE" Instant Game prize of $2.00, $3.00, $5.00, $8.00, $10.00, $15.00, $20.00, $50.00, $100, or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WHEEL OF FORTUNE" Instant Game prize of $1,000, $2,500 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WHEEL OF FORTUNE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "WHEEL OF FORTUNE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "WHEEL OF FORTUNE" Instant Game, the

Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 529. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 529 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2.00	1,008,000	10.00
$3.00	524,160	19.23
$5.00	322,560	31.25
$8.00	80,640	125.00
$10.00	80,640	125.00
$15.00	60,480	166.67
$20.00	40,320	250.00
$50.00	40,320	250.00
$100	6,216	1,621.62
$200	2,520	4,000.00
$1,000	71	141,971.83
$2,500	40	252,000.00
$25,000	14	720,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.65. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 529 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 529, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200500332
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 25, 2005

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Instant Game Number 533 "Set for Life"

1.0 Name and Style of Game.

A. The name of Instant Game No. 533 is "SET FOR LIFE". The play style is "key number match with auto win and/or multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 533 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 533.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, COIN SYMBOL, STAR SYMBOL, LIFE SYMBOL, $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $50.00, $100, $200, $500, $1,000, $2,500 and $5,000/WK.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 533 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
COIN SYMBOL	AUTO
STAR SYMBOL	WINX10
LIFE SYMBOL	WIN
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$

$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$500	FIV HUND
$1,000	ONE THOU
$2,500	25 HUND
$5,000/WK	5TH/WK

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 533 - 1.2E

CODE	PRIZE
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅ which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, $200 or $500.

I. High-Tier Prize - A prize of $1,000, $2,500 or $5,000/WK ($5,000 per week not to exceed $5,000,000 total).

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (533), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 533-0000001-001.

L. Pack - A pack of "SET FOR LIFE" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket front 001 on the other side.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SET FOR LIFE" Instant Game No. 533 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SET FOR LIFE" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) play symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player will win prize shown for that number. If a player reveals a COIN SYMBOL, the player wins prize indicated instantly. If a player reveals a STAR SYMBOL, the player wins ten (10) times the prize shown. If the player reveals a LIFE play symbol, the player wins $5,000 per week (not to exceed $5,000,000 total). No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No four or more like non-winning prize symbols on a ticket.

C. No duplicate WINNING NUMBERS play symbols on a ticket.

D. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

E. The STAR (win x 10) play symbol will only appear on intended winning tickets as dictated by the prize structure.

F. The LIFE play symbol will only appear with the $5,000/WK prize symbol and both symbols will only appear on the three winning tickets as dictated by the prize structure.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "SET FOR LIFE" Instant Game prize of $10.00, $20.00, $50.00, $100, $200, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, $200 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "SET FOR LIFE" Instant Game prize of $1,000 or $2,500, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SET FOR LIFE" Instant Game prize of $10.00, $20.00, $50.00, $100, $200, $500, $1,000 or $2,500, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. When claiming a "SET FOR LIFE" Instant Game prize of $5,000 per week , (not to exceed $5,000,000 total), the claimant must choose one of the following four (4) payment options for receiving the prize:

1. Weekly via direct deposit to the winner's account. With this plan, upon validation of the prize, 52 weekly payments of $5,000, less any taxes and/or other offsets or mandatory withholdings required by law, will be made each Wednesday up to $260,000 per year. Additional payment(s) may be made to reach the total maximum payment of

$5,000,000. *NOTE: The investment is based on 52 weeks per year. Some years may have 53 weeks per year, however, only 52 weeks per year will be paid. On years with 53 weeks, no payment will be made on the last Wednesday in December.

2. Monthly via direct deposit to the winner's account. With this plan, upon validation of the prize, an initial payment of $21,674 less any taxes and/or other offsets or mandatory withholdings required by law, will be made each year on the first business day of the month of the claim. A payment of $21,666 less any taxes and/or other offsets or mandatory withholdings required by law, will be made on the first business day for the remaining eleven months of each year for a combined total of up to $260,000 per year. Monthly payments will be made for a period 231 months with the final payment of $16,660 less any taxes and/or other offsets or mandatory withholdings required by law, to reach the total maximum payment of $5,000, 000.

3. Quarterly via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of $65,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made four times a year on the first business day of the first month of each calendar quarter (January, April, July, October) for a total of $260,000 per year. Quarterly payments will be made for approximately 19 years for a total of 77 quarters with the final quarterly payment of $60,000 less any taxes and/or other offsets or mandatory withholdings required by law, to reach the total maximum payment of $5,000,000.

4. Annually via direct deposit to the winner's account. With this plan, Upon validation of the prize, a payment of $260,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made once a year on the first business day of the anniversary month of the claim. Annual payments will be made for a period of 19 years or a total of 19 annual payments. One additional payment of $60,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made to reach the total maximum payment of $5,000,000.

5. If a payment falls on a holiday or weekend, the payment will be made on the following business day.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SET FOR LIFE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "SET FOR LIFE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 533. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 533 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	1,447,200	5.56
$20	603,000	13.33
$50	138,020	58.25
$100	107,200	75.00
$200	17,420	461.54
$500	2,345	3,428.57
$1,000	134	60,000.00
$2,500	134	60,000.00
$5K/WK/LIFE	3	4,020,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.47. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 533 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 533, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200500333
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 25, 2005

♦ ♦ ♦

Instant Game No. 537 Lucky 7's

1.0 Name and Style of Game.

A. The name of Instant Game No. 537 is "LUCKY 7'S". The play style is "three in a line".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 537 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 537.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 2, 3, 4, 5, 6, 7, 8, 9, $1.00, $2.00, $3.00, $5.00, $7.00, $11.00, $17.00, $20.00, $27.00, $47.00, $77.00 $100, $200 and $2,000.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 537 - 1.2D

PLAY SYMBOL	CAPTION
2	
3	
4	
5	
6	
7	
8	
9	
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$7.00	SEVEN$
$11.00	ELEVEN
$17.00	SVNTN
$20.00	TWENTY
$27.00	TWY SVN
$47.00	FRY SVN
$77.00	SVY SVN
$100	ONE HUND
$200	TWO HUND
$2,000	TWO THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 537 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
FIV	$5.00
SVN	$7.00
ELV	$11.00
SVT	$17.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $5.00, $7.00, $11.00, $17.00 or $20.00.

H. Mid-Tier Prize - A prize of $27.00, $47.00, $77.00, $100 or $200.

I. High-Tier Prize- A prize of $2,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (537), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 537-0000001-001.

L. Pack - A pack of "LUCKY 7'S" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page. A ticket will be folded over on both the front and back of the book so both ticket art and tickets backs are displayed in the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY 7'S" Instant Game No. 537 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LUCKY 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 10 (ten) Play Symbols. If a player reveals three identical play symbols, 7's, either diagonally, vertically or horizontally then the player wins the prize shown in the prize box. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 10 (ten) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 10 (ten) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 10 (ten) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Every ticket will contain a minimum of four 7 symbols.

C. No ticket will contain 3 or more of a kind other than the 7 symbol.

D. A ticket may only win once.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY 7'S" Instant Game prize of $1.00, $2.00, $3.00, $5.00, $7.00, $11.00, $17.00, $20.00, $27.00, $47.00, $77.00, $100 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if

valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $27.00, $47.00, $77.00, $100 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY 7'S" Instant Game prize of $2,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "LUCKY 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "LUCKY 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 17,040,000 tickets in the Instant Game No. 537. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 537 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,704,000	10.00
$2	1,226,880	13.89
$3	340,800	50.00
$5	102,240	166.67
$7	102,240	166.67
$11	34,080	500.00
$17	34,080	500.00
$20	34,080	500.00
$27	20,164	845.07
$47	7,455	2,285.71
$77	4,615	3,692.31
$100	2,840	6,000.00
$200	1,420	12,000.00
$2,000	181	94,143.65

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.71. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 537 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 537, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200500265
Kimberely L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 20, 2005

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Public Utility Commission of Texas

Notice of Application for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 20, 2005, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Mid-Tex Cellular, Ltd. For Designation as an Eligible Telecommunications Carrier (ETC). Docket Number 30666.

The Application: The company is requesting ETC designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs for service areas set forth by the commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 18, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30666.

TRD-200500342
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 25, 2005

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Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On June 18, 2005, Megsinet-CLEC, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60221. Applicant intends to relinquish its certificate.

The Application: Application of Megsinet-CLEC, Incorporated to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 30660.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 9, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30660.

TRD-200500294
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 25, 2005

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 14, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156.

Docket Title and Number: Application of West Telcom, Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 30653 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

Applicant's requested SPCOA geographic area includes the area of Texas comprising the Dallas Local Access and Transport Area (LATA).

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 9, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30653.

TRD-200500275
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 20, 2005

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on January 18, 2005, for an amendment to certificated service area boundaries.

Docket Style and Number: Application of TXU Electric Delivery Company for a Certificate of Convenience for Service Area Boundaries within Dallas County, Texas. Docket Number 30661.

The Application: The proposed boundary amendment will realign the electric service area boundaries at the General Dynamic's Ordinance and Tactical Systems facility to allow TXU Electric Delivery Company (TXU Delivery) to serve the entire site. A section of the facility site, comprising three individual structures, is located in the singly certificated service area of Garland Power and Light (Garland) and is provided electric service by Garland. TXU Delivery requests an exception in service area to serve the three structures located in the singly certificated area of Garland. Garland has agreed with a change in service arrangement.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than February 11, 2005, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 30661.

TRD-200500343
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 25, 2005

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Notice of Filing Made for Approval of a Tariff Rate Change for a Tariff Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed by North Texas Telephone Company (North Texas) with the Public Utility Commission of Texas (commission) on January 10, 2005, to make a tariff rate change.

Title and Control Number: Application of North Texas Telephone Company (North Texas) for Approval of Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171. Tariff Control Number 30641.

The Application: North Texas has filed a statement of intent with the commission to implement rate changes to its residential and business monthly Local Exchange Access Line Service and Returned Check Charge. North Texas also intends to revise and re-classify its Service Order Charges. North Texas estimates that this tariff change will increase the regulated intrastate gross annual revenues of the company by $10,630 for the first year of service, which is less than 3% of North Texas' gross annual intrastate revenues.

For a copy of the proposed tariffs or for further information regarding this application, customers should contact North Texas Telephone Company at 6100 Highway 16, DeLeon, TX 76444 or call (254) 893-2003 during regular business hours.

Customers have a right to petition the commission for a review of this application. If the commission receives a complaint relating to the proposed change from either an affected intrastate access customer or a group of affected intrastate access customers that, the preceding 12 months, the company billed more than 10% of its total intrastate gross access revenues, the application will be docketed. The deadline to comment or request to intervene in this proceeding is April 1, 2005. Persons wishing to comment or intervene should contact the Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711- 3326 or call the commission at (512) 936-7120 or in Texas (toll-free) at 1-888-782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (toll-free) 1-800-735-2988.

TRD-200500263

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 19, 2005

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Texas Department of Transportation

Public Notice--Aviation

Pursuant to Transportation Code, §21.111 and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.dot.state.tx.us

Click on Aviation, click on Aviation Public Hearing. Or, contact Joyce Moulton, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68 PILOT.

TRD-200500269
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: January 20, 2005

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Request for Proposal for Aviation Engineering Services

The City of Spearman, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division will solicit and receive proposals for professional aviation engineering design services described in this notice.

Airport Sponsor: City of Spearman, Spearman Municipal Airport. TxDOT CSJ No.:0304SPEAR Scope: Provide engineering/design services to rehabilitate runway 2/20; mark runway 2/20; rehabilitate parallel & stub taxiways.

The DBE goal is set at 0%. TxDOT Project Manager is Russell Deason.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online by selecting "Spearman Municipal Airport" at:

www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address:

http://www.dot.state.tx.us/avn/avn550.doc

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

(Attention: To ensure utilization of the latest version of Form 550, firms are encouraged to download Form 550 from the TxDOT website as addressed above. Utilization of Form 550 from a previous download may not be the exact same format. Form 550 is an MS Word Template).

Four completed, unfolded copies of Form AVN 550 must be postmarked by U. S. Mail by midnight Friday, February 25, 2005 (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. Monday, February 28, 2005; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. Monday, February 28, 2005 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The consultant selection committee will be composed of local government members. The final selection by the sponsor's committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at:

www.dot.state.tx.us/business/avnconsultinfo.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Russell Deason, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200500346
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: January 25, 2005

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Request for Proposal - Private Consultant Services

The Texas Department of Transportation (TxDOT) announces a Request for Proposal (RFP) for private consultant services pursuant to Government Code, Chapter 2254, Subchapter B. The term of the contract will be from project initiation to 270 days later. The Maintenance Division (division) of TxDOT will administer the contract. The RFP will be released on February 11, 2005 and is contingent upon the finding of fact from the Governor's Office.

Purpose: The consultant is needed to develop and document functional requirements for a new maintenance management application. Based on the requirements, the consultant will also propose and document alternative solutions for the new system. The requirements and alternative solutions will be used to determine the feasibility of replacing the current Maintenance Management Information System (MMIS) with a new system which will extend the functionality of the existing application. The consultant will: develop a comprehensive description of functional requirements for each management level for each module within the Maintenance Management Cycle as defined by the Maintenance Division and document alternative solutions to be considered during phase 2 of the project.

Eligible Applicants: Eligible applicants include, but are not limited to, organizations that provide private consulting services.

Program Goal: The completion of a report that documents business requirements for a new application and proposed solutions for the new application.

Review and Award Criteria: Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers from the division will evaluate the proposals as to the private consultant's competence, knowledge, and qualifications and as to the reasonableness of the proposed fee for the services. The criteria and review process are further described in the RFP.

Deadlines: TxDOT must receive proposals prepared according to instructions in the RFP package at or before March 11, 2005, 5:00 p.m. Central Daylight Time.

To Obtain a Copy of the RFP: Requests for a copy of the RFP should be submitted to Brandye Payne, Texas Department of Transportation, Maintenance Division, 125 East 11th Street, Austin, Texas 78701-2483. Telephone (512) 416-3191. Fax (512) 416-2941.

Copies will also be available on TxDOT's Maintenance Division web page at

http://www.dot.state.tx.us/mnt/contract/rfp.htm

or

http://www.dot.state.tx.us Select About TxDOT, Divisions and Offices, Maintenance Division, Request for Proposals/Qualifications

TRD-200500347
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: January 25, 2005

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The University of Texas System

Notice on Entering into Major Consulting Services Contract

In accordance with the provisions of Chapter 2254, *Texas Government Code*, The University of Texas at San Antonio has entered into a contract for consulting services more particularly described in the Request for Proposal for Consulting Services related to the food service master plan, published in the *Texas Register* on October 22, 2004, (29 TexReg 10322). The consultant will design and implement a new master food service plan and provide advisory service.

The name and address of the consultant is as follows:

Worrell Design

10200 Richmond Ave Ste 280

Houston, TX 77042-416055

The University will pay an amount not to exceed $36,300.00. The initial term of the contract shall be for a period starting January 24, 2005 through May 2005. Final reports are due no later than May 31, 2005.

Any questions regarding this posting should be directed to:

Jeannette P. Portillo

Buyer II

Materials Management Department

The University of Texas at San Antonio

6900 N. Loop 1604 West

San Antonio, TX 78249

Voice: 210-458-4063

Email: jeannette.portillo@utsa.edu

TRD-200500362
Francie A. Frederick
Counsel and Secretary to the Board
The University of Texas System
Filed: January 26, 2005

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Request for Proposal - Consulting Services

The University of Texas Southwestern Medical Center at Dallas

Notice of Intent to Seek Consulting Services Related to Clinical Service Strategic Planning

The University of Texas Southwestern Medical Center at Dallas will be seeking competitive sealed proposals to hire a consultant to provide U. T. Southwestern with the development of a comprehensive clinical strategic plan. The consultant will develop various deliverables including a Stakeholder Interview Survey Tool and Analysis Process, development of processes for U. T. Southwestern's Health System Planning Team to be involved in the clinical services planning process, the development of an implementation plan for a minimum of one year, and a comprehensive Strategic Plan Document that provides a road map for 3-5 years, including implementation workplans and infrastructure capital investments.

The President of U. T. Southwestern has made a finding of fact that the consulting services are necessary. U. T. Southwestern does not currently have the in-house expertise to complete this project.

The award for the services will be made by a review of competitive sealed proposals that will result in the best value to the University.

Parties interested in a copy of the Request for Proposal should contact:

Trish Smith

Associate Vice President for Health System Planning

UT Southwestern Medical Center at Dallas

5323 Harry Hines Blvd.

Dallas, TX 75390-9131

Voice: 214/648-9986

Email: trish.smith@utsouthwestern.edu

The proposal submission deadline will be Monday, February 28, 2005 at 3:00 p.m. Central Time.

TRD-200500341
Francie A. Frederick
Counsel and Secretary to the Board
The University of Texas System
Filed: January 25, 2005

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Request for Proposal - Consulting Services

The University of Texas Southwestern Medical Center at Dallas

Notice of Intent to Seek Consulting Services Related to ERP Business Case Development and System Selection Services

The University of Texas Southwestern Medical Center at Dallas is seeking competitive sealed proposals for consulting assistance and system

selection services of a new Enterprise Resource Planning (ERP) solution for the university, with a primary focus on finance, materials management and human resources modules. A major component of these selection services will include the development of a business case for the U. T. Southwestern Health System, identifying the projected business benefits of implementing an ERP system as well as projecting detailed capital and operating costs for implementing and supporting the new processes and systems. Finally, the consultant will recommend an ERP system vendor, based on its ability to meet the requirements defined in the Business Case, and will also provide a recommend scope and approach for system implementation.

The President of U. T. Southwestern has made a finding of fact that the consulting services are necessary. U. T. Southwestern does not currently have the in-house expertise to complete this project.

The award for the services will be made by a review of competitive sealed proposals that will result in the best value to the University.

Parties interested in obtaining a copy of the Request for Proposal should contact:

Mr. Timothy G. Stephens

Director, Information Resources

Mailing Address: 5323 Harry Hines Blvd. Dallas, TX 75390-8595

Phone: 214-648-1588

Fax: 214-648-6235

Email: timothy.stephens@utsouthwestern.edu

The proposal submission deadline will be Tuesday, March 1, 2005, at 5:00 p.m. CST.

TRD-200500363
Francie A. Frederick
Counsel and Secretary to the Board
The University of Texas System
Filed: January 26, 2005

♦ ♦ ♦

Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the *Procedures and Standards for the Medical Advisory Committee*. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee representative vacancies:

Primary

* Public Health Care Facility

Alternate

* Public Health Care Facility

* Dentist

* Pharmacist

* Podiatrist

* Employer

* Employee

* General Public Representative 1

* General Public Representative 2

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings. Voluntary service on the Medical Advisory Committee is greatly appreciated by the TWCC Commissioners and the TWCC Staff.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at *http://www/twcc.state.tx.us.* Click on 'Commission Meetings', then 'Medical Advisory Committee'. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or Ruth Richardson, Manager of Monitoring, Analysis and Education, Medical Review Division at 512-804-4850 .

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance

carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The TWCC Commissioners designate the chairman of the MAC. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman: Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division; prior to meetings, confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

a. Preparation of a suitable agenda.

b. Planning MAC activities.

c. Establishing meeting dates and calling meetings.

d. Establishing subcommittees.

e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200500334
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: January 25, 2005

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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